

**THE EFFECTS OF ISSUE LINKAGE ON STATE BARGAINING STRATEGIES:
INSTITUTIONAL CONDITIONS FOR COOPERATIVE
AND NON-COOPERATIVE BARGAINING**

by

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AND NON-COOPERATIVE BARGAINING**

Heather Elko McKibben, PhD

University of Pittsburgh, 2008

This project addresses the relationship between institutional design and cooperation in international bargaining. In particular, it addresses the question of how the institutional structure within which states bargain impacts states' decisions to adopt cooperative, rather than non-cooperative, bargaining strategies.

The project draws on the issue linkage literature to analyze one central feature of institutional bargaining structure, "offsetting distributional patterns." When states place importance on different issues included in a bargain and their relative valuation of these issues becomes more disparate, distributional patterns are said to be more "offsetting." In such circumstances, states are more likely to adopt cooperative, rather than zero-sum, bargaining strategies. This relationship exists even if, on each issue, states have antithetical interests. The linkage of issues with more offsetting distributional patterns serves to transform the zero-sum game on each issue into a positive-sum game of linked issues.

To build this theoretical argument, the project draws on an abstract, formalized logic analyzing two players bargaining over two issues. It demonstrates that the more offsetting are the distributional patterns of the linked issues, the more likely players are to truthfully reveal their interests – an important step which facilitates the adoption of cooperative bargaining strategies in the incomplete information setting that characterizes much international bargaining.

Combined with the incentives created by the issue linkage structure, truthful revelation leads states to adopt cooperative, rather than non-cooperative, bargaining strategies.

To empirically test this argument, the project first presents empirical measurement rules for the central variables of interest. Interview evidence with state representatives in the European Union is coded using these rules to construct a large-N dataset on which MLE analyses are conducted to test the central hypothesis relating issue linkage and offsetting distributional patterns to states' adoption of cooperative bargaining strategies. The interview evidence is then employed to construct in-depth case studies to highlight the hypothesized causal mechanisms and observable implications of the theoretical argument. Both the statistical results from the MLE analysis and empirical evidence from the case studies serve to support the project's central hypothesis.

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PREFACE

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1.0 INTRODUCTION

Why, and under what conditions, will states adopt cooperative types of bargaining strategies, rather than the non-cooperative strategies they are often assumed to employ? In particular, how does the institutional structure within which states bargain impact their strategic decision to bargain cooperatively or non-cooperatively? This project draws on the issue linkage literature to analyze one central feature of the institutional bargaining structure, “offsetting distributional patterns.” Empirically tested on decision-making in the European Union (EU), it argues that when states place importance on different issues included in a bargain and their relative valuation of the issues becomes more disparate, the “distributional patterns” of those issues are more “offsetting.” In response, these states are more likely to adopt cooperative, rather than zero-sum, bargaining strategies.

This relationship is argued to exist even if, on each of the issues, states have antithetical interests. The linkage of these types of issues serves to transform the zero-sum game on each issue into an overall positive-sum game. This creates incentives for states to truthfully reveal their interests and adopt cooperative bargaining strategies. The more offsetting are the distributional patterns of the linked issues, the greater are these incentives.

In brief, this project addresses the relationship between institutional design and international bargaining cooperation analyzed in terms of state bargaining strategies, a linkage as yet unexplained in the International Relations (IR) literature.

1.1 CURRENT THEORIZING

The study of international cooperation is an important focus in the IR literature. When examining the bargaining phase of international cooperation,¹ there are different ways that bargaining cooperation is conceptualized. Some studies explicitly or implicitly define bargaining cooperation in terms of states being able to solve the “coordination problem” of bargaining and mutually agree on some bargaining outcome.² Other studies have defined bargaining cooperation in terms of the time it takes to reach an agreement (Fearon 1998). However, another important aspect of bargaining cooperation has received relatively little attention in the international cooperation literature – the degree to which the actual bargaining *strategies* adopted by states are “cooperative” in nature.

Examining the cooperative nature of state bargaining strategies is important for three reasons. First, the character of the bargaining interactions adopted by states can impact their relationship and therefore their future interactions – even those not directly linked or related to a given bargaining interaction (Walton and McKersie 1965; Goldman and Rojot 2003: 53). Second, international cooperation has several phases, and strategies adopted in the bargaining phase of cooperation can impact cooperation in the enforcement phase that follows (Fearon 1998).

Finally, bargaining outcomes themselves are not independent, but rather are influenced and structured by the bargaining strategies that states adopt.³ Analyzing international bargaining

¹ For a discussion of the different “phases” of cooperation, see (Fearon 1998).

² For example, see how bargaining cooperation is discussed by (Krasner 1991; Myerson 1991; Young 1991; Sebenius 1992; Fearon 1995; Muthoo 1999). In addition, this interpretation is implicit in the issue linkage literature’s discussion of “issue linkage success/failure” (Tollison and Willett 1979; Sebenius 1983; Morgan 1990).

³ This is implicit in the game-theoretic literature where outcomes are defined by the “strategy profile” of the players in equilibrium (Nash 1951).

outcomes without considering states' bargaining strategies thus presents an incomplete understanding of state bargaining and how and why international bargaining outcomes come to be structured in a particular way. Rather than exclusively focusing on the outcomes of the bargaining process, the focus in this study is therefore on the cooperative nature of states' bargaining *strategies*, recognizing that these strategies will also have an important impact on bargaining outcomes.

1.1.1 Current Theorizing – State Bargaining Strategies

Much theorizing in the IR literature assumes (explicitly or implicitly) that state bargaining strategies will be non-cooperative in nature – i.e., that states adopt “hard bargaining” strategies. The non-cooperative ideal type is analogous to the realist view of state bargaining interactions (Hopmann 1995) as evidenced by Grieco's (1993) portrayal of states as “defensive positionalists.” States are assumed to approach negotiations with the goal of “winning” at the expense of other states by remaining firm while other states are flexible and offer concessions (Grieco 1993). This view not only captures the standard view of international bargaining, but is also consistent with some portrayals of bargaining in the European Union (Moravcsik 1998). However, in contrast to this standard view, some studies argue, and have demonstrated empirically, that states sometimes do adopt more cooperative types of bargaining strategies (Hopmann 1995; Lewis 1998; Elgström and Jönsson 2000; Lewis 2000).

This finding therefore presents a multi-faceted puzzle: why would states adopt cooperative bargaining strategies? And under what conditions will they do so? Most studies that have highlighted the more cooperative aspects of state bargaining strategies either focus on whether or not cooperative strategies characterize a bargaining setting (e.g., Lewis 1998; Lewis

2000) or adopt a more normative approach arguing that bargainers should adopt these types of strategies (e.g., Fisher and Ury 1981; Riaffa 1982). The few studies that have examined the more theoretical questions that the adoption of cooperative strategies raises either analyze the specific characteristics of a given state in order to assess the cooperative nature of their strategies (Dür and González 2007), specific cognitive approaches of bargaining actors (e.g., Pruitt 1981; Druckman 1993; Druckman 1994), or the political context of a given bargain (Elgström and Jönsson 2000).

1.1.2 Current Theorizing – Issue Linkage Institutional Structures

While these are important factors in analyzing why and under what conditions states will adopt more cooperative bargaining strategies, they overlook the role of institutions.⁴ The rational institutionalist literature argues that the behavior of actors is shaped by the institutional structure within which their strategic interactions occur (e.g., Shepsle 1989; Crain and Tollison 1990; Tsebelis 1990; Krehbiel 1991; Cox and McCubbins 1993; Shepsle and Weingast 1994; Döring 1995; Strøm 1995; Scharpf 1997). In addition, the issue linkage literature argues that the particular set of issues which structures a bargaining setting can have important effects on strategic bargaining interactions (e.g., Tollison and Willett 1979; Sebenius 1983; Morgan 1990; Lohmann 1997), and issue linkage itself has been argued to play an important role in international cooperation more generally (e.g., Axelrod and Keohane 1985; Martin 1993).

⁴ “Institutions” is taken here to refer not only to formal institutions, but more broadly to “sets of rules” (Mearsheimer 1994/95; Simmons and Martin 2002). Thus, even in an anarchic setting, certain “rules” exist which structure state interactions – often analyzed and captured by a particular “game structure” (e.g., Axelrod 1984; Keohane 1984; Martin 1992). It is this broad understanding of institutions adopted here.

These studies have not, however, examined the impact of issue linkage on the types of bargaining strategies that states adopt. They focus instead on bargaining outcomes and whether or not an agreement is able to be reached, i.e., what is often referred to as bargaining “success” (Tollison and Willett 1979; Sebenius 1983; Morgan 1990; Martin 1994). Given the relevance of bargaining strategies for a full understanding of bargaining outcomes, it is important to examine how issue linkage affects the nature of states’ bargaining strategies.

I draw on the rational institutionalist and issue linkage literatures to argue that the linkage of issues to structure a bargaining interaction creates an institutional setting which impacts the cooperative nature of the strategies adopted by states. In particular, the more “offsetting” are the distributional patterns of the issues linked together to structure states’ bargaining interaction, the more cooperative those states’ bargaining strategies will be, holding all else constant. These central concepts are discussed in detail in the sections that follow.

1.2 COOPERATIVE BARGAINING

Drawing on the standard definition of international cooperation as states’ “mutual adjustment” in the presence of conflicting interests (Keohane 1984),⁵ the cooperative nature of a state’s bargaining strategy is formally defined as “the degree to which the willing making of offers that are Pareto-superior for states not making the offer⁶ characterizes the overall strategy of a state engaged in a bargaining situation.” Less formally, and more intuitively, the concept of

⁵ See discussion on p. 51-54 for description of this definition. See (Milner 1992) for defense of the claim that there is a ‘consensus’ on this definition.

⁶ It should be noted that these offers may be Pareto-superior for multiple parties, potentially including the state making the offer. However, their central feature related to the idea of cooperative bargaining strategies is that they are offers that are Pareto-superior for *others*.

cooperative bargaining can be thought of as *the degree to which a state's bargaining strategy consists of willingly offering concessions to other states*.

The analysis of states' strategies when they are engaged in a "bargaining situation" refers to a situation in which the players are involved in a joint decision-making process in which they share a common interest in reaching a joint agreement, but have conflicting interests over which agreement they would prefer (Nash 1950; Schelling 1960; Muthoo 1999). The existence of this bargaining situation therefore directly connects this definition to the presence of conflicting interests necessary for international cooperation to be observed (Keohane 1984). Furthermore, the idea of "willingly making offers" in a bargaining situation is analogous to the idea of the "willing adjustment" of a state's policies in the enforcement phase of cooperation (Keohane 1984). This definition is therefore analogous to the standard definition of international cooperation, and helps to extend this concept directly to the study of state bargaining interactions.

The "cooperative" ideal is a strategy defined by a state willingly offering concessions to other states (i.e., making offers that are Pareto-superior for other states). The "non-cooperative" ideal is a strategy defined by a state not making concession offers, but rather demanding concessions and/or engaging in strategies designed to *extract concessions* from other states. These two ideal types define the opposite poles between which a continuum of bargaining strategies can be defined and measured (Goertz 2006). Chapter 6 presents empirical measurement rules for coding the degree and willingness of concessions along this continuum. It is "cooperative bargaining" as defined in this way that this study seeks to explain.

1.3 ISSUE LINKAGE AND OFFSETTING DISTRIBUTIONAL PATTERNS

This project draws on the issue linkage literature, arguing that the adoption of cooperative bargaining strategies by states is fostered when issues with particular characteristics are linked together to structure their bargaining interaction. That issues are “linked” refers to the fact that these issues are “simultaneously discussed for joint settlement” (Sebenius 1983: 287). In any given bargain, there may be multiple issues that are linked together for joint settlement by states. For example, in negotiations in the WTO, the breakdown of barriers to trade in multiple issue areas may be discussed in the same round of negotiations; in negotiations over the Treaty of Maastricht, many issues were simultaneously considered for joint settlement – from the decision rules that would govern future decision-making in different issue areas to the definition of a “citizen” of the EU to the scope of activities that should be dealt with by the EU (92/C/191/01). The linkage of issues is a central characteristic of international negotiations.

The issue linkage literature highlights an important characteristic of some types of linked issues – that some issues have “offsetting distributional patterns.” This concept refers to the fact that the issues linked together to structure a bargain are “differently valued” – i.e., that the benefits from the different issues are skewed toward different bargaining actors (Tollison and Willett 1979). More intuitively, that issues have “offsetting distributional patterns” refers to the fact that *different actors place a high degree of importance on different issues*.

This project draws on this central concept to better understand why, and the conditions under which, states will adopt cooperative bargaining strategies. In addition to drawing on this theoretical concept, this project also adds to the issue linkage literature by laying out rules for the empirical observation of “offsetting distributional patterns” across different bargains involving different numbers of actors and different numbers of issues. Using these coding rules, the

argument presented here (and other theoretical arguments that draw on this important concept) can be empirically tested.

1.4 OVERVIEW OF ARGUMENT

This project treats the issues over which states bargain as a feature of the institutional (game) structure of a bargain. It argues that issue linkage bargaining structures that have “offsetting distributional patterns” are what are referred to in the mechanism design literature as “incentive compatible mechanisms.” In other words, bargaining structures characterized by issues with offsetting distributional patterns incentivize actors to truthfully reveal (rather than strategically misrepresent) their interests. This truthful revelation of interests then leads actors to adopt cooperative, rather than non-cooperative, bargaining strategies.

However, when a bargaining interaction is structured such that the issues over which actors bargain are *not* characterized by offsetting distributional patterns, this provides incentives for actors not to truthfully reveal, or even to strategically misrepresent, their interests to the other actors involved in the bargain. This, then, leads to the adoption of non-cooperative bargaining strategies.

Developing this argument, a simple theory-building formalized logic is presented in Chapter 3. The analysis which draws implications from this formal logic shows that this relationship between issue linkage with offsetting distributional patterns and cooperative bargaining exists even if the players have antithetical interests on the issues. In other words, issue linkage bargaining structures with offsetting distributional patterns transforms what would

have been a zero-sum game into a positive-sum game, fostering the truthful revelation of interests and the adoption of cooperative bargaining strategies.

This logic leads to the following empirically testable hypothesis about the conditions under which states will adopt bargaining strategies that are cooperative in nature, rather than the non-cooperative strategies they are often assumed to adopt. In particular, this project argues that holding all else constant, *the more “offsetting” are the distributional patterns of the linked issues over which states bargain, the more “cooperative” their bargaining strategies will be.*

1.5 OVERVIEW OF RESEARCH DESIGN

For reasons related to research design, this argument is empirically tested on several bargaining interactions that took place within the decision-making structure of the European Union (EU). In particular, the Council of Ministers, along with its institutional structure (the decision-making structure in which the bargains examined here take place), is an EU institution within which international bargaining takes place. The institution is characterized by bargaining among *state* representatives representing *state* interests, with relatively little interference from outside actors or interests in the bargaining interaction itself.⁷ It is therefore an *intergovernmental* institution, indeed often treated in the EU literature as “too intergovernmental” for many of the supranational characteristics of the EU to be observed (e.g., Pollack 2003). The bargaining interactions analyzed are representative of “typical” state interactions. The choice to look at decision-making in the Council of Ministers institutional structure was made for reasons of

⁷ This is not to say that other EU institutions have no impact on this bargaining interaction, but that the *key* factor in these negotiations is the interests and interactions among *states*.

research design. The bargaining examined here is not much different than one would find in other intergovernmental institutions, and the theoretical argument and empirical findings have implications for international bargaining in general.⁸

Chapter 4 provides an overview of the decision-making process of the EU and directly connects the more general theoretical argument to the EU decision-making process, deriving a testable hypothesis and observable implications. Conducting the analysis in the EU setting allows for a research design which approximates, as closely as possible, an experimental design. By examining bargaining in the EU setting, many potential mitigating factors can be held constant while the main dependent and independent variables vary. It therefore yields an empirical test with a high degree of confidence that the effects attributed to offsetting distributional patterns stem from this institutional feature (i.e., internal validity).

Examining bargaining within the EU is also important to control as closely as possible for endogeneity. The argument presented treats the particular set of issues in a bargain as exogenous to the bargaining interaction that takes place. While this does not mean that the argument cannot speak to bargains in which issue structures are endogenous to the interaction, these types of interactions cannot be used to directly *test* it.

In the EU, the issues over which the member states bargain are set by proposals presented by the European Commission. Previous research has shown that this institution has its own interests and politics that largely drive the form that the proposals take and the particular issues they include. Thus, while there still exist some potential endogeneity concerns, the source of the issue structure in the EU is closer on the “continuum of plausibility” to an “as if” random

⁸ This is not to argue that there are not limitations. These limitations are discussed in depth in Chapter 10.

assignment⁹ than many other international bargaining situations in which the issue structure can be set or changed by the bargaining actors themselves.

Finally, the argument presented here makes important contributions to the study of decision-making in the EU. In particular, rather than arguing that bargaining among the EU member states is characterized either by non-cooperative, “hard” bargaining processes (Moravcsik 1998) or by a more cooperative “Community method” (Lewis 1998; Lewis 2000), this project argues that both types of bargaining strategies can and are adopted by states engaged in EU decision-making. It then provides specific conditions under which one or the other type of bargaining would be expected to be observed.

Analyzing intergovernmental bargaining in the EU is therefore important, first, for research design purposes. But additionally, the theoretical argument and empirical analysis contribute to an important debate in the literature examining EU decision-making regarding the character of these bargaining processes.

1.6 OVERVIEW OF EMPIRICAL EVIDENCE

Within this EU setting, this study’s unit of analysis is “member state-bargain.” Five bargaining interactions which took place across three different dossiers in the European Union are examined. These cases include an “everyday” environmental directive involving the collection and recycling of waste batteries, as well as the highly politicized Services Directive. Both of these directives fall under Pillar 1 legislation in the EU. In Pillar 3, the Framework Decision on

⁹ See (Dunning 2007) for a discussion of the continuum of plausibility of an “as if” random assignment of the independent variable.

Combating Racism and Xenophobia is examined.¹⁰ In each bargaining interaction, the bargaining strategy of each member state is analyzed with the expectation that, holding all else constant, each member state should adopt a more cooperative bargaining strategy when engaged in bargaining over issues set by a proposal from the Commission which have more offsetting distributional patterns.

To empirically test this argument, 118 elite interviews were conducted from 2005 to 2007. In addition, working documents which cataloged the positions of the member states in each bargaining process were gathered. Using carefully constructed measurement rules laid out in Chapter 5 and 6, this evidence was used to code the distributional patterns of the set of issues included in the bargain and the bargaining strategies adopted by each member state, creating a large-N dataset to test the central hypothesis of this project. This evidence was also used to conduct in-depth case studies to analyze the causal mechanisms argued to underpin this hypothesized relationship.

1.7 OUTLINE OF THE PROJECT

The dissertation proceeds as follows. Chapter 2 connects the theoretical argument to the literatures on which it builds. It explicitly lays out how the argument draws on the international cooperation, issue linkage, and mechanism design literatures, as well as the contributions the project makes in furthering these research programs either theoretically or empirically.

¹⁰ Pillar 1 legislation is governed by a qualified majority voting (QMV) decision-rule. Pillar 1 generally includes environmental, economic, and social policy. Pillar 2 and 3 legislation includes politically and nationally sensitive issues. Decisions in these pillars are governed by a unanimity decision-rule, so each member state in the EU reserves the right to veto legislation with which it does not agree. Pillar 2 includes foreign and security policy and Pillar 3 covers justice and home affairs policy.

Drawing on these literatures, Chapter 3 uses a formalized logic to analyze a simple bargaining interaction in which two players bargain over two issues. This basic bargaining game is used to derive implications regarding the cooperative nature of the bargaining strategies that states adopt. In particular, it is used to demonstrate that when players place importance on different issues included in a bargain and their relative valuation of the issues becomes more disparate, their incentives to adopt cooperative bargaining strategies increases. This relationship is shown to exist even if states have antithetical interests on the issues.

Chapter 4 builds on this more abstract analysis to construct an empirically-grounded theoretical argument that lends itself to empirical testing in real-world cases of international bargaining. It draws on the case of the European Union to construct this more nuanced theoretical argument. Chapter 4 first discusses the decision-making process of the EU, and then derives a testable hypothesis and observable implications related to this argument at work in the case of the EU. The central empirical expectation is that, holding all else constant, *as the distributional patterns of the issues laid out in a legislative proposal (presented by the Commission or Presidency) become more offsetting, the bargaining strategies adopted by the EU member states will become increasingly cooperative in character*. It then considers potential alternative explanations for the cooperative nature of states' bargaining strategies that need to be considered.

Chapter 5 lays out empirical coding rules for the central explanatory variable, the degree to which the distributional patterns of a set of issues are offsetting, and Chapter 6 does the same for the central dependent variable – cooperative bargaining. Then, controlling for variables related to potential alternative explanations, Chapter 6 presents a statistical analysis of the project's central hypothesis. The findings show that offsetting distributional patterns have a

positive and statistically significant impact on the degree to which member state bargaining strategies are cooperative in nature. The relationship holds across several different models and measures of the key variables of interest. Moreover, this chapter shows that the impact is not only statistically, but also substantively, significant.

Recognizing that the statistical analysis can evaluate the co-variation between the degree to which an issue linkage structure is offsetting and the bargaining strategies adopted by the member states, but cannot directly assess any *causality* in the relationship between these two factors, Chapters 7 through 9 contain in-depth case studies that extend the large-N analysis. The case studies are used to trace the causal process and highlight the empirically observable implications of the theoretical argument laid out in Chapter 4.

Chapter 7 analyzes the negotiations over the un-politicized, largely “everyday,” and technocratic Battery Directive. In contrast, Chapter 8 analyzes two phases of negotiation on the highly politicized Services Directive in the field of economic and competition policy. Finally, Chapter 9 analyzes two phases of negotiation over the Framework Decision on Combating Racism and Xenophobia – a dossier that touched upon constitutional issues for many of the member states and was, thus, characterized by highly politicized and sensitive negotiations.

Overall, these analyses – both large-N and small-N – provide evidence of the hypothesized causal process at work in EU negotiations. They provide important evidence that offsetting distributional patterns are correlated with, and causally linked to, the cooperative nature of states’ bargaining strategies. Though the empirical support is somewhat weaker, they also provide empirical evidence of the truthful revelation causal mechanism argued to underpin the relationship at work in these cases.

Chapter 10 summarizes the argument and ties together the large-N and small-N empirical evidence. It then reflects on limitations on the theoretical argument presented in this thesis and highlights paths for future research.

2.0 LITERATURE REVIEW

Addressing the question of how the institutional structure within which states bargain impacts their bargaining strategies, this project argues that, as defined in Chapter 1, the more “offsetting” are the distributional patterns of the issues linked together to structure a bargaining interaction, the more “cooperative” their bargaining strategies will be. The causal mechanism through which this relationship is argued to occur is states’ “truthful revelation” (rather than “strategic misrepresentation”) of their interests to the other states involved in the bargain.

In making this argument, this project builds on several different literatures. First, by analyzing the cooperative (or non-cooperative) nature of the bargaining strategies of states, this project addresses both the international cooperation literature and the negotiation literature that studies the types of strategies negotiators adopt. Second, in the causal argument, by addressing states’ choice to either truthfully reveal or strategically misrepresent their interests, this project draws on the mechanism design literature. This literature is dedicated to the study of how institutional designs shape the behavior of the players interacting within them, with a particular focus on the construction of institutional designs that incentivize actors to truthfully reveal their interests. Third, in analyzing the distributional patterns of the issues that structure a bargain, this project draws explicitly on a concept highlighted by the issue linkage literature – “offsetting distributional patterns.” By building both theoretically and empirically on this concept, this project makes important contributions to this literature.

The remainder of this chapter is dedicated to discussing these literatures and the gaps which exist in current analyses. It concludes by specifying the contributions this project makes by addressing these gaps.

2.1 INTERNATIONAL BARGAINING COOPERATION

The analysis of international cooperation is of central importance in the International Relations (IR) literature, in general, and the institutionalist vein of IR, in particular. In this field, most studies analyze the enforcement phase of international cooperation (e.g., Axelrod 1984; Keohane 1984; Axelrod and Keohane 1985; Oye 1986; Martin 1992a; Martin 1992b). In other words, these studies examine international cooperation in terms the implementation, monitoring, and “enforcement” of an international agreement (Fearon 1998). The bargaining phase of cooperation – the process through which these agreements are reached – has received comparatively less attention in the literature, though it has become increasingly important and prevalent in the study of international cooperation.¹¹

In the current IR literature, there are different ways that bargaining cooperation has been conceptualized. Most often, however, studies either explicitly or implicitly define bargaining cooperation in terms of the *outcome* of the bargaining process. In other words, bargaining cooperation is defined as states being able to solve the “coordination problem” of bargaining and mutually agree on some bargaining outcome. This definition is often explicit in many standard IR analyses of bargaining (Krasner 1991; Myerson 1991; Young 1991; Sebenius 1992; Fearon

¹¹ For important examples of the study of bargaining cooperation, see (Sebenius 1992; Fearon 1998).

1995), and is implicit in the issue linkage literature's discussion of "issue linkage success/failure" (e.g., Tollison and Willett 1979; Sebenius 1983; Morgan 1990; Martin 1994), as will be discussed in more detail below.

The international cooperation literature has paid relatively little attention to another important factor related to cooperation in international bargaining processes – the degree to which the bargaining strategies adopted by states are "cooperative" in nature. Analyzing this aspect of bargaining cooperation is important for three reasons. First, the character of the bargaining interactions adopted by states can impact their relationship and therefore their future interactions – even those not directly linked or related to a given bargaining interaction (Walton and McKersie 1965; Goldman and Rojot 2003: 53). Second, international cooperation has several phases, and strategies adopted in the bargaining phase of cooperation can impact cooperation in the enforcement phase that follows (Fearon 1998). Most importantly, strategic bargaining outcomes are actually influenced and structured by the types of strategies that bargaining actors adopt.¹²

Gaining a better understanding of state bargaining strategies, and the conditions under which those strategies will be more or less cooperative in nature, is therefore an important topic in the study of international cooperation, and bargaining cooperation, more particularly. Though not common in the study of international cooperation, analyses of the character of bargaining strategies are prevalent in the broad study of negotiations and negotiation tactics. These conceptualizations and analyses are therefore discussed in the following section.

¹² In the game-theoretic understanding of strategic interactions, the strategy profile of the players defines and determines a bargain's (or any strategic interaction's) "outcome" (Nash 1951; Muthoo 1999).

2.2 CONCEPTUALIZATION OF BARGAINING STRATEGIES

An important component of the larger concept of international bargaining cooperation is the cooperative nature of the bargaining strategies adopted by states. There are several ways in which bargaining strategies are characterized in the negotiation literature. Examples of current conceptualizations include the distinction between integrative and distributive bargaining (Walton and McKersie 1965; Riaffa 1982; Bartos 1995), integrative and competitive bargaining (Pruitt 1981) bargaining and problem solving (Hopmann 1995; Elgström and Jönsson 2000), hard and soft bargaining (Dür and González 2007), claiming-value and creating-value tactics (Lax and Sebenius 1986), and zero-sum versus positive-sum approaches (Lax and Sebenius 1986; Hopmann 1995).

While these conceptualizations are often used in the bargaining and international relations literatures, they suffer from several drawbacks. First, these classifications are conceptualized in dichotomous terms (i.e., a bargaining strategy is either distributive or it is integrative). However, while making these dichotomous distinctions, scholars in the field recognize that a given bargaining strategy may, and often will, have characteristics which do not perfectly align with one of the two categories. In addition, the bargaining strategies that negotiators adopt in real-world bargaining situations often have characteristics of *both* theoretical types of bargaining behavior (see Lax and Sebenius 1986: 33; Hopmann 1995: 42). These dichotomous distinctions, then, often do not provide a conceptualization that can be easily applied or used to analyze real-world cases of bargaining interactions.

Second, these classifications are often conceptualized in a way that is difficult to empirically measure in a consistent way¹³ and/or they often group together several different types of tactics which may or may not necessarily be related. For example, the more “cooperative” strategy in these dichotomies has been argued to include tactics such as joint problem-solving (Walton and McKersie 1965; Pruitt 1981; Elgström and Jönsson 2000), multi-issue negotiations (Riaffa 1982; Gupta 1989), any bargain in which the players *have* common interests (Goldman and Rojot 2003), bargaining that is *focused on* common interests (Lax and Sebenius 1986; Elgström and Jönsson 2000), logrolling across issues (Pruitt 1981), ‘creative’ negotiation processes (Basadur, Pringle et al. 2000; Elgström and Jönsson 2000), ‘bridging’ behavior (Pruitt 1981), bargaining that involves ‘search behavior’ (Bartos 1995), a consensus focus (Lewis 2003), a positive-sum (v. zero-sum) orientation (Lax and Sebenius 1986; Elgström and Jönsson 2000), a focus on absolute (v. relative) gains (Hopmann 1995), and overall, the existence of a desire to reach agreement (Lax and Sebenius 1986).

Finally, these classifications, which implicitly speak to the larger concepts of international cooperation and bargaining cooperation, are not conceptualized in a way that clearly links them to these larger issues.

Given the drawbacks to these current conceptualizations of the cooperative nature of bargaining strategies, in this project, I present and use a new concept: “cooperative bargaining.” Building on the standard “mutual adjustment” definition of international cooperation (Keohane 1984), cooperative bargaining was defined in Chapter 1 as the degree to which a state’s bargaining strategy consists of willingly offering concessions to other states. It is therefore

¹³ See Dür and González’s criticism of other classifications (2007: 5-6). However, even in their own attempt to create a classification which lends itself better to empirical measurement and testing, these authors admit that the distinction between their proposed classification also may not always be clear-cut (Dür and González 2007: 9).

conceptualized as a continuum with a single, observable empirical characteristic – the degree to which a bargaining strategy is characterized (or not characterized) by the willing offering of concessions. Measurement rules are presented in Chapter 6 for coding the degree and willingness of a concession. Unlike previous conceptualizations of bargaining strategies, cooperative bargaining is conceptualized in a way that allows it to be empirically measured in a consistent and reliable manner.

In addition, its conceptualization as a continuum rather than a dichotomous differentiation provides the concept of cooperative bargaining with a high degree of face validity. In other words, it is a concept that is intuitively closer to capturing variation in real-world bargaining strategies than current dichotomous conceptualizations. Finally, because it is explicitly connected to and derived from the definition of international cooperation, cooperative bargaining is conceptualized in a way that allows for it to be used to explicitly build on and contribute to the study of international cooperation in IR.

2.3 CURRENT THEORIZING ABOUT STATE BARGAINING STRATEGIES

Most theorizing in the IR literature assumes, either explicitly or implicitly, that state bargaining strategies will be “non-cooperative” in nature, as defined by the conceptualization presented in Chapter 1. This largely non-cooperative conception of state bargaining strategies is highlighted most particularly by the portrayal of international negotiations presented by Thomas Schelling (Schelling 1960). The non-cooperative ideal type has also been argued to be analogous to the view of state bargaining interactions that is present, either explicitly or implicitly, in much realist theorizing (Hopmann 1995). An important example of this is Grieco’s portrayal of states as

“defensive positionalists,” arguing that states approach international negotiations with the goal of “winning” at the expense of the other party, remaining firm while other states are flexible and offer compromises (Grieco 1993). This view of states adopting largely non-cooperative tactics, as defined here, is also consistent with some portrayals of bargaining in the European Union (e.g., Moravcsik 1998).

Despite this standard interpretation of international bargaining, some studies argue and have demonstrated empirically that states sometimes do adopt more cooperative types of bargaining strategies (e.g., Hopmann 1995; Lewis 1998; Elgström and Jönsson 2000; Lewis 2000). These different interpretations of state bargaining lead to the question that drives this dissertation: why, and under what conditions, will states adopt more cooperative types of bargaining strategies, rather than non-cooperative strategies? Most studies that have analyzed state bargaining strategies either focus on whether or not cooperative strategies characterize a bargaining setting (e.g., Lewis 1998; Lewis 2000) or adopt a more normative approach, arguing that negotiators should adopt these types of strategies (e.g., Fisher and Ury 1981; Riaffa 1982). The few studies that have examined the more theoretical question of the conditions under which different types of strategies will be adopted either analyze the specific characteristics of a given state in order to assess the cooperative nature of their strategies (Dür and González 2007), the cognitive approach of negotiators (e.g., Pruitt 1981; Druckman 1993; Druckman 1994), or the political context of a given bargain (Elgström and Jönsson 2000).

While these are important factors, they overlook the potentially important role of institutions.¹⁴ The rational institutionalist literature argues that the behavior of actors is shaped

¹⁴ “Institutions” is taken here to refer not only to formal institutions, but more broadly to “sets of rules” (Mearsheimer 1994/95; Simmons and Martin 2002). Thus, even in an anarchic setting, certain “rules” exist which

by the institutional structure within which their strategic interactions take place (e.g., Shepsle 1989; Crain and Tollison 1990; Tsebelis 1990; Krehbiel 1991; Cox and McCubbins 1993; Shepsle and Weingast 1994; Döring 1995; Strøm 1995; Scharpf 1997). The issue linkage literature has further argued that the particular set of issues which structures a bargaining interaction can have important effects on the outcome of that interaction (e.g., Tollison and Willett 1979; Sebenius 1983; Morgan 1990; Lohmann 1997). In addition, issue linkage has been argued to be important for international cooperation, conceptualized beyond just the bargaining phase (e.g., Axelrod and Keohane 1985; Martin 1993). Neither of these literatures, though, has examined the impact of issue linkage on bargaining *strategies*, nor have they evaluated their claims in an empirically rigorous way. It is, therefore, important to examine – both theoretically and empirically – the impact of institutional issue linkage bargaining structures on state bargaining strategies.

Drawing on the rational institutionalist and issue linkage literatures, I argue that the issues linked together to structure a bargaining interaction create an institutional setting which impacts the cooperative nature of the strategies adopted by states. In particular, this project seeks to demonstrate that certain types of issue linkage structures will lead states to overcome incentives to strategically misrepresent their interests, thus leading to the adoption of cooperative bargaining strategies. In addition to the literature on bargaining cooperation and bargaining strategies, this argument has important connections to the mechanism design and issue linkage literatures. These connections are discussed in the sections that follow.

structure state interactions – often analyzed and captured by a particular “game structure” (e.g., Axelrod 1984; Keohane 1984; Martin 1992). It is this broad understanding of institutions adopted here.

2.4 INCENTIVE COMPATIBLE MECHANISMS

The mechanism design literature provides a useful approach for addressing the impact of institutions on the behavior of states engaged in bargaining interactions. Mechanism design is a theoretical apparatus focused on “formulat[ing] an environment governing [the] interaction between [actors] in a manner such that the strategic behavior produces the desired outcome; and this must be achieved without knowledge of the characteristics of the individuals” (Bergin 2005: 65). It is used mainly in the economics literature in the analysis of public goods’ provision (Mutuswami and Winter 2004) and auction theory (Vickrey 1961; Harris and Raviv 1981; Bulow and Roberts 1989; McAfee and Reny 1992; McAfee 1993; Jehiel, Moldovanu et al. 1999; Abrache, Crainic et al. 2004; Matsushima 2005). The problem it seeks to address is that of actors’ private information about their own preferences, and finding solutions to overcome the incentives that exist for these actors to strategically misrepresent those preferences.

The difficulty of overcoming the incentive actors have to strategically misrepresent their interests is particularly relevant in bargaining settings, where this strategic misrepresentation can be used to gain leverage in the bargaining process (see Schelling 1960; Riaffa 1982: 143-144).¹⁵ The incentive to strategically misrepresent one’s interests is often cited as a key factor impeding the ability of players/states to reach a bargaining agreement.¹⁶ Thus, mechanism design is particularly relevant for the study of international bargaining cooperation.

¹⁵ As described by Thomas Schelling, “bargaining power” can be understood as the “power to fool and bluff.” In other words, it is the power to “set the best price for yourself and fool the other into thinking this was your maximum” (Schelling 1960: 23).

¹⁶ This inability to reach agreement is also referred to as “bargaining inefficiency.” Overcoming the incentive to strategically misrepresent their interests in order to prevent this “inefficiency” is a key focus of the mechanism design literature which examines bargaining interactions (Myerson 1979; Myerson and Satterthwaite 1983; Myerson 1984; Myerson 1991; Talley 1994).

The mechanism design literature focuses on finding institutional designs which serve to impose costs on actors for untrue claims of interest (i.e., remove the benefits of such actions) in such a way that the incentive to strategically misrepresent interests is no longer a factor in the bargaining process. In other words, this literature seeks to find institutional designs that give actors incentives to only ask for as much as they truly want or need. This is referred to as the “truthful revelation” of interests, and institutional designs that foster truthful revelation are referred to as “incentive-compatible mechanisms.” More specifically, an incentive compatible mechanism is an institutional structure in which the utility an actor derives from truthfully revealing its underlying interests is at least as great as the utility derived from any other claim of interests in the bargaining process (Myerson 1979; Myerson 1983; McAfee and McMillan 1988; Myerson 1991; Miller and Hammond 1994; McCarty and Meirowitz 2006).¹⁷

In a seminal work in the field, Myerson and Satterthwaite (1983) demonstrate that, in a bargaining setting, no incentive-compatible mechanism can be efficient without outside subsidies, where ‘outside subsidies can be understood as payments ‘external to’ the specific bargain or trade taking place. Because of this need for subsidies, work in this field has shown that *no* efficient, incentive-compatible mechanism is budget-balancing, and therefore always has a residual – either positive or negative (Walker 1978; Hurwicz 1979; Myerson and Satterthwaite 1983; Groves 1985). This led to the important conclusion that incentive-compatible mechanisms are not “credible” solutions to the problem of the strategic misrepresentation of interests because the inevitable residual will become the object of political conflict. Thus, either the mechanism

¹⁷ This is true by the definition of an incentive-compatible mechanism: that the utility of truthfully revealing ‘type’ (which will be defined here in terms of interests) is greater than or equal to revealing any other ‘type,’ given the true type of the actor. See (Myerson 1979; Myerson 1983; McAfee and McMillan 1988; Myerson 1991; Miller and Hammond 1994; McCarty and Meirowitz 2006) for formal definition, some discussions of this concept, and demonstrations of how it is used.

will not be sustainable in the long-run or the political conflict over the residual will lead to inefficiencies (Miller and Hammond 1994). Both of these problems eliminate the effectiveness of the mechanism.

Addressing this dilemma, Jackson and Sonnenschein (2007) used a formal model to show that it is possible for issue linkage to create an incentive compatible mechanism without the need for such outside subsidies. To demonstrate this, they take one particular example of issue linkage and show (formally) that it fosters the truthful revelation of interests (Jackson and Sonnenschein 2007).

Building upon this argument that it is *possible* for issue linkage to create an incentive compatible mechanism, the current project connects the idea of incentive compatible mechanisms directly to the concepts laid out in the issue linkage literature. In particular, it shows that *any* institutional bargaining structure that links together issues with “offsetting distributional patterns” is incentive compatible.

In addition, rather than simply demonstrating this formally and theoretically, as the mechanism design literature often does, I go one step further and empirically *test* whether or not this type of institutional bargaining design characterized by issues with offsetting distributional patterns does in fact exert the hypothesized effect. This concept of issues with “offsetting distributional patterns” on which this project draws is discussed in the next section.

2.5 ISSUE LINKAGE AND BARGAINING COOPERATION

In the international cooperation literature, issue linkage has been cited as an important factor that can help to bring about cooperation among states (e.g., Axelrod and Keohane 1985; Martin 1992b; Martin 1993). More particularly focused on the bargaining phase of international cooperation, issue linkage is also often highlighted as a factor that can help bring about bargaining cooperation, conceptualized as the avoidance of conflict by reaching an agreement in a bargaining process. The potential and actual role of issue linkage in securing this type of cooperation is widely cited in the literature (e.g., Tollison and Willett 1979; Haas 1980; Sebenius 1983; McGinnis 1986; Hoekman 1989; Martin 1993; Conconi and Perroni 2002) and is demonstrated by formal and experimental evidence in the social psychological literature (e.g., Deutsch 1973; Rubin and Brown 1975; Pruitt 1981; Pruitt 1992).

However, T. Clifton Morgan argues that, in many cases, issue linkage is “unsuccessful” – i.e., it does not help to bring about bargaining agreements (Morgan 1990). Morgan asserts that linkage failures occur when the benefits produced by the linkage are not sufficient to overcome the costs involved in bringing the additional issue into the bargaining (Morgan 1990: 321). Thus, issue linkage may fail at bringing about cooperation, even on a single agreement.

The key feature cited by the literature which determines whether or not linked issues will foster bargaining cooperation relates to whether the issues are “differently valued” (Pruitt 1981), in other words, if the linked issues are characterized by “heterogeneity” of states’ interests in relation to those issues (Martin 1994). Issues that have this characteristic are referred to as issues with “offsetting distributional patterns” (Tollison and Willett 1979).

When issues which have distributional patterns that are “offsetting” are linked together, the linkage can be effective in bringing about bargaining agreements (Tollison and Willett 1979;

Sebenius 1983; Martin 1994). However, when issues which do not have these offsetting distributional patterns are linked together, the linkage can actually prevent bargaining agreements from being reached (Pruitt 1981; Sebenius 1983).

While highlighting an important concept related to the “success” of issue linkage in fostering international cooperation, this literature suffers from several drawbacks. Most significantly, similar to much of the current IR literature, these studies theorize about the impact of issue linkage on the outcomes of the bargaining process, i.e., whether a bargaining agreement will be reached by states. They therefore suffer from the same problem: because they do not assess the impact of issue linkage on the bargaining *strategies* that influence and largely structure the bargaining outcome that results, they remain incomplete as explanations of international bargaining.

In addition, generalizable measurement rules for the distributional patterns of issues have not been laid out by this literature. Without these rules, systematic empirical evidence cannot be used to test whether issue linkage does, in fact, impact bargaining cooperation among states.

2.6 ADDRESSING THESE GAPS

This dissertation addresses these theoretical and empirical gaps in the current literature, making several important contributions to the study of international cooperation, bargaining strategies, and issue linkage. First, it contributes to the literature on international cooperation, in general, and bargaining cooperation, more particularly, by analyzing the cooperative nature of state bargaining strategies.

Second, the dissertation presents a new concept, “cooperative bargaining,” defined in a way that lends itself to reliable and consistent empirical measurement. In addition, this concept is explicitly connected to the study of international cooperation, more broadly defined. By presenting this new concept, the dissertation contributes to the study of bargaining strategies and brings this study more squarely into the international cooperation literature.

Finally, the argument and analysis carried out in the dissertation address important gaps in the issue linkage literature. First, this project presents a theory that directly connects the concept of issues with offsetting distributional patterns to the bargaining *strategies* that states adopt. It therefore does not simply examine bargaining outcomes, overlooking the important role of states’ strategies in defining those outcomes. The dissertation also lays out rules for the empirical measurement of the degree to which the distributional patterns of issues are offsetting. Most importantly, these measurement rules are generalizable across different bargaining situations that involve different types and numbers of states and different types and numbers of issues. By specifying these measurement rules, this project can empirically test the argument that it makes. In doing so, it also contributes to the issue linkage literature more generally, by providing rules that can be used to empirically test other issue linkage arguments that before have not been empirically evaluated in a systematic way.

Overall, therefore, the dissertation makes several theoretical and empirical contributions to the study of international cooperation. It also builds on the rational institutionalist literature by showing how institutions – understood broadly as the rules and features of the game that structure bargaining among states – impact the cooperative nature of state bargaining strategies. Chapter 3 employs a simple bargaining model to build the theoretical argument. Chapter 4 builds upon this model to construct an empirically-testable argument about how the issue linkage

structure of bargaining interactions impacts states' revelation of their interests and the bargaining strategies they adopt. The remainder of the dissertation is dedicated to the empirical application and testing of this argument on bargaining interactions within the European Union.¹⁸

¹⁸ The EU literature to which this project contributes will be discussed in Chapter 4.

3.0 BUILDING A THEORY OF ISSUE LINKAGE CONDITIONS FOR COOPERATIVE BARGAINING

Why, and under what conditions, will states adopt more cooperative types of bargaining strategies, rather than the non-cooperative strategies they are often assumed to employ? In particular, how does the institutional structure within which states bargain impact this decision? This chapter argues if the players value the issues differently, there are conditions under which they will willingly offer concessions and reach a mutually beneficial bargaining agreement *even if* on each of two issues they have antithetical interests. Whether or not this occurs depends on the players' relative valuation of the issues which structure their bargaining interaction.

In particular, this project argues that if the players are bargaining over two linked issues, X and Y, the more interest player 1 has at stake in issue X relative to issue Y and the more interest player 2 has at stake in issue Y relative to issue X, the more “offsetting” are the distributional patterns of those two issues.¹⁹ The logic developed in this chapter is used to demonstrate that the more offsetting are the distributional patterns of the issues linked together to structure a bargaining interaction, the greater are the incentives players face to adopt a bargaining strategy in which they willingly offer concessions.

¹⁹ This conceptualization extends the dichotomous conceptualization of “offsetting distributional patterns” or “differently valued issues” to a continuous concept. This will be discussed in more detail in the sections to follow, and will be empirically operationalized in Chapter 5.

This relationship is argued to exist because issue linkage structures that have more offsetting distributional patterns are more likely to be “incentive compatible.” In other words, offsetting distributional patterns are characteristics of an institutional (game) structure which can foster the truthful revelation, rather than strategic misrepresentation, of states’ underlying interests. This truthful revelation of interests impedes the adoption of standard “hard bargaining,” concession-extracting bargaining strategies (i.e., “non-cooperative bargaining” strategies, as defined here) and fosters the offering of concession (i.e., “cooperative bargaining strategies). *In short, the linkage of issues with offsetting distributional patterns can transform what would have been a zero-sum game into a positive-sum game,²⁰ providing states with incentives to truthfully reveal their interests and adopt cooperative bargaining strategies.*

To build this argument, this chapter proceeds in three main steps. First, it lays out a very simple, abstract discussion of a bargaining interaction in which two players bargain over two issues. This discussion is then used to highlight the players’ different valuation of the two issues as a necessary condition for concessions to be offered by the players. The final two steps build on this model to draw implications that this has regarding the specific issue linkage conditions under which truthful revelation of interests and cooperative bargaining should be expected. The second step shows that if linked issues do not have offsetting distributional patterns, the players are expected to either strategically misrepresent (or at the very least, not truthfully reveal) their interests, and to adopt non-cooperative bargaining strategies. Finally, it is shown that if the issues are differently valued by the players, as the distributional patterns of the issues become

²⁰ This is consistent with the arguments of some scholars that study “integrative bargaining” (e.g., Riaffa 1982). However, the argument presented here differs from these other works in two fundamental ways. First, rather than simply positing this argument, this project analyzes and empirically tests the particular conditions under which issue linkage can lead to the adoption cooperative bargaining strategies. Second, it analyzes the mechanisms through which this effect takes place, highlighting the truthful revelation of interests as an important mechanism connecting issue linkage to cooperative bargaining.

more offsetting, it should be more likely that they will truthfully reveal their underlying interests and adopt cooperative bargaining strategies. The chapter concludes by addressing the limitations of this abstract argument and the need for a more empirically-grounded theory.

3.1 SIMPLE BARGAINING GAME: NO ISSUE LINKAGE

Consider a bargaining game in which two players (1 and 2) are bargaining over two one-dimensional issues (X and Y). The issues are not linked together, but rather are negotiated separately – i.e., in different bargaining games. On each issue, player 1 prefers an agreement which moves from some baseline point²¹ closer to her own ideal point in the issue space, and thus away from the ideal point of player 2. Player 2 has antithetical preferences, preferring an agreement which moves from the baseline point closer to her own ideal point, and thus away from the ideal point of player 1.

Directly connecting the bargaining strategies in this simple model to the concept of “cooperative bargaining” introduced in Chapter 1, let $c_{ij} > 0$ represent a “concession” offered by player i on issue j . In other words, it represents an offer by player i to move the bargaining agreement from the status quo c units toward the ideal point of player $-i$ on that issue, j . By the definition of the issue space as one-dimensional, any concession offered by player i therefore represents a utility loss for player i and a utility gain for player $-i$.

²¹ In the standard, zero-sum game, the baseline point is the status quo. In a situation in which some set of agreements is preferable to the status quo for both players, the baseline can be thought to represent some distribution of the payoffs from the agreement (or some “focal point”) (Schelling 1960). In both cases, the players have antithetical interests – both prefer a bargaining agreement that is closer to their own ideal point and away from the ideal point of the other player.

For simplicity, assume that the status quo²² is located between the players' ideal points, and the payoff from the status quo to each player is normalized to zero. This therefore creates the most difficult case for concession-offering, because each state will receive negative utility on each issue for any agreement which moves from the status quo toward the ideal point of the other state on that issue. In other words, if player i offers a concession on issue X , she receives utility $-c_{iX}$ and player $-i$ receives utility c_{iX} . Because the issues are not linked together, but considered separately, both players weigh the utility from a bargaining outcome on each issue to their status quo payoff from that issue, 0, when choosing their bargaining strategy (i.e., their equilibrium value of c_{ij} for each issue j). Because any concession offer yields a negative utility, and thus a payoff less than the payoff from the status quo, neither player is willing to move from the status quo toward the ideal point of the other – i.e., to offer concessions. Therefore, no bargaining space exists in this case. In equilibrium, no concessions will be offered by the players (i.e., in equilibrium, $c_{ij} = 0 \quad \forall i \forall j$).

3.2 SIMPLE BARGAINING GAME: ISSUE LINKAGE

Now consider the “linkage” of the two issues – i.e., that they are “simultaneously discussed for joint settlement” (Sebenius 1983: 287). In other words, the two issues are negotiated together in one bargaining game. Rather than weighing the payoff on each issue against the status quo payoff on that issue, in an issue linkage setting, each player weighs the *overall* payoff from the two issues together against the status quo payoff for those two issues.

²² In other words, assume that the baseline point is the status quo.

Issue linkage, itself, is often argued to further international cooperation (Axelrod and Keohane 1985; Martin 1992a). However, as demonstrated below, not *all* linkages of issues can be effective in fostering cooperation.²³ Therefore, analyzing the specific *characteristics* of different issue linkage structures is important in furthering the study of international cooperation. It is this overall goal on which this chapter is focused.

Consider the case where the two issues are equally important to the interests of player i . In this case, player i may be indifferent between: (1) offering a concession on one issue and receiving an equivalent concession on the other, and (2) remaining at the status quo. Both yield a payoff of zero.²⁴ However, with any cost of negotiation, $v > 0$, the payoff derived from the bargaining outcome in which concessions are exchanged is less than the payoff from the status quo.²⁵ Thus, given any bargaining costs, the willing offering of concessions cannot be sustained in this case, *despite* the linkage of multiple issues.

Suppose now that issue X is more important to state 1 than issue Y. This idea of “importance” implies that state 1 receives a higher payoff for a one-unit move toward its ideal point on issue X than it receives for a one-unit move toward its ideal point on issue Y. Given this differential valuation of the two issues, a bargaining space potentially opens up.

Let $v \geq 0$ be the cost of negotiation and let $w_i > 0$ represent the importance of issue X to player i relative to issue Y. This idea of relative importance implies that a one-unit move in the

²³ See also Sebenius (1983) and Morgan (1990) who argue that only issue linkage with certain characteristics constitute “successful” issue linkage which can lead to a bargaining agreement. This study differs from these works in several important ways. First, it provides a continuous (rather than dichotomous) conceptualization of the features of issue linkage. Second, it examines the implications of these differences for the types of *strategies* adopted by bargaining actors. Third, it highlights the importance of information, and adds to the analysis a consideration of the truthful (or untruthful) nature of the claims of interests made by actors. In particular, it analyzes the incentives regarding claims of interest that actors face from different issue linkage bargaining structures and the impacts of this strategic choice on the bargaining strategies players adopt.

²⁴ In other words, $-c_{ij} + c_{-ik} = 0$ when $c_{ij} = c_{-ik}$.

²⁵ In other words, $-c_{ij} + c_{-ik} - v < 0$ for all $v > 0$ when $c_{ij} = c_{-ik}$.

policy space of issue X yields a payoff to player i that is w_i times as great as a one-unit move in the policy space of issue Y. If issue X is twice as important as issue Y to the interests of player 1, $w_1 = 2$; if issue Y is three times as important as issue X to the interests of player 1, $w_1 = \frac{1}{3}$, and so on. Let $c_{ij} \geq 0$ be the concession offer of player i on issue j .²⁶ A range of agreements that player i prefers to the status quo exists when the payoff from the concessions offered by player $-i$ ($w_i \cdot c_{-iX} + c_{-iY}$) minus the costs of the concessions offered by player i ($w_i \cdot c_{iX} + c_{iY}$) exceed any bargaining costs, v . In other words, player i prefers an agreement derived from any exchange of concessions on issues X and Y to the status quo when the following inequality holds:

$$(w_i \cdot c_{-iX} + c_{-iY}) - (w_i \cdot c_{iX} + c_{iY}) > v. \quad ^{27}$$

More intuitively, because player 1 values issue X more than issue Y, the positive payoff player 1 receives from the concession offered by player 2 on issue X can be greater than the negative payoff that results from her own concession offer. This opens up the possibility for a range of agreements (the size of which depends on the relative importance of the two issues) that player 1 prefers to the status quo – *even if* there is some cost of negotiation.²⁸ This is the case for any set of concessions such that the overall payoff to player 1 exceeds any bargaining costs that she faces. The same is true for player 2.

²⁶ Note that because of the zero-sum, one-dimensional nature of the issue space for both issues, it is not possible that the concession-offer (i.e., the move from the status quo) on an issue is positive for both players. The bargaining agreement is either closer to player 1's ideal point than is the status quo and further from the ideal point of player 2 (i.e., a positive concession offer by player 2) or the agreement is closer to player 2's ideal point than is the status quo and further from the ideal point of player 1 (i.e., a positive concession offer by player 1). Thus, if $c_{ij} > 0$ then

$$c_{-ij} = 0.$$

²⁷ This is a simplification of the inequality that represents a comparison of the overall payoff to concession-offering and the status quo payoff: $(w_i \cdot c_{-iX} + c_{-iY}) - (w_i \cdot c_{iX} + c_{iY}) - v > 0$.

²⁸ The concept of cost of negotiation, as defined in the simple game laid out here can refer not only to transaction costs associated with engaging in a bargaining process itself (Williamson 1985: 20), but also to costs of specific bargaining actions necessary to bring about an agreement, such as the truthful revelation of interests, as will be discussed in more detail below.

For example, suppose issue X is two times as important as issue Y to the interests of player 1, and the costs of bargaining equal 1. Because the two issues are valued differently, a range of agreements potentially opens up for player 1. In particular, player 1 prefers any exchange of concessions carried out in this way, such that $2 \cdot c_{2X} - c_{1Y} - 1 > 0$, to the status quo, which yields a payoff of zero. In other words, for any concession offered by player 2 such that $2 \cdot c_{2X} > c_{1Y} + 1$, player 1 prefers this agreement to the status quo.

Importantly, the impact of issue linkage cannot end at this simple analysis. This is because the payoff to any player i depends not only on her own concession offer and relative valuation of the issues, but also on the strategy adopted by the player $-i$. Therefore, because bargaining is a strategic interaction, the fact that each player places a different degree of importance on the two issues is not enough to overcome the incentives that exist which hinder the offering of concessions.

3.3 OFFSETTING DISTRIBUTIONAL PATTERNS

3.3.1 Differential Valuation of Issues

For concessions to be willingly offered in a strategic bargaining interaction, the players must not only each place different degrees of importance on the two issues over which they bargain, as shown above, they must also consider *different* issues as the most important. This central characteristic of issue linkage is highlighted in the discussion below.

For both players to willingly offer concessions, it is necessary that *both* $(w_1 \cdot c_{2X} + c_{2Y}) - (w_1 \cdot c_{1X} + c_{1Y}) > v$ and $(w_2 \cdot c_{1X} + c_{1Y}) - (w_2 \cdot c_{2X} + c_{2Y}) > v$. As demonstrated in

Appendix A, it is only possible for both of these inequalities to hold in two sets of issue linkage bargaining structures: (1) if issue X is more important than issue Y to the interests of player 1 and issue Y is more important than issue X to the interests of player 2 (and concessions are exchanged such that player 1 receives concessions on issue X and player 2 receives concessions on issue Y) and (2) if issue Y is more important than issue X to the interests of player 1 and issue X is more important than issue Y to the interests of player 2 (and concessions are exchanged such that player 1 receives concession on issue Y and player 2 receives concessions on issue X).

Only in these two cases is there any potential for a benefit (i.e., a positive payoff) to be derived by both players from the willing offering of concessions. These two cases both embody the idea that the players place importance in winning on opposite issues. This finding is consistent with current discussions that cite the importance of the linkage of “differently valued” issues (Pruitt 1981), issues with “offsetting distributional patterns” (Tollison and Willett 1979), or the “heterogeneity of the players interests” across the issues (Martin 1994) to allow them to reach a mutually beneficial bargaining agreement – i.e., for issue linkage “success” (Morgan 1990).

3.3.2 Defining Offsetting Distributional Patterns

However, in addition to the issues simply being either “differently valued” or not (i.e., a dichotomous conceptualization), the logic presented here shows that the actual *degree* to which the players differently value the issues that structure their bargaining interaction is an important factor that drives the incentives they face when choosing their bargaining strategies.

In particular, the *more* differently the issues are valued by the players, the greater the potential benefit from concession-offering to each player. In other words, the greater player 1

values issue X relative to issue Y (i.e., the larger the value of w_1) and the greater player 2 values issue Y relative to issue X (i.e., the smaller the value of w_2), the greater is the potential benefit the players can derive from exchanging concessions on those issues.

Taken together, this indicates that the greater the value of $(w_1 - w_2)$, the greater is the potential value of $(w_1 \cdot c_{2X} + c_{2Y}) - (w_1 \cdot c_{1X} + c_{1Y}) - v$ and $(w_2 \cdot c_{1X} + c_{1Y}) - (w_2 \cdot c_{2X} + c_{2Y}) - v$, if player 2 offers concessions on issue X (i.e., $c_{2X} > 0$ and $c_{1X} = 0$) and player 1 offers concessions on issue Y (i.e., $c_{1Y} > 0$ and $c_{2Y} = 0$).²⁹ The same is true if player 1 values issue Y (i.e., the value of w_1 is small) and player 2 values issue X (i.e., the value of w_2 is large). In other words, as $|w_1 - w_2|$ increases, the potential benefits for the exchange of concessions on the issues of lesser importance to each player increases.³⁰

This logic extends the dichotomous concept of differently valued issues – i.e., issues with “offsetting distributional patterns” – from the current literature to a more nuanced, continuous conceptualization. Connecting this to the current literature, the greater the differential valuation for both players, the more “offsetting” are the distributional patterns of the issues structuring the bargain. More generally, as $|w_1 - w_2|$ increases, the distributional patterns of the issues become more “offsetting.”

In addition to extending the current discussions of issue linkage characteristics to this more nuanced and continuously conceptualized of issues with offsetting distributional patterns,

²⁹ For any given values of c_{2X} , c_{1Y} and v , the payoff to players 1 and 2 $(w_1 \cdot c_{2X} + c_{2Y}) - (w_1 \cdot c_{1X} + c_{1Y}) - v$ and $(w_2 \cdot c_{1X} + c_{1Y}) - (w_2 \cdot c_{2X} + c_{2Y}) - v$ derived from the exchange of concessions on these issues is greater at greater values of $(w_1 - w_2)$.

³⁰ It is important to note that this claims about the effect of the increased value of $|w_1 - w_2|$ holds only in the case where the issues are differently valued. Thus the differential valuation of issues is a key component of the definition of offsetting distributional patterns, not simply the value of w_1 relative to w_2 .

this project also extends the current issue linkage literature in several ways. First, rather than merely analyzing the outcomes of bargaining, this project analyzes the impact of issue linkage on the particular types of bargaining *strategies* adopted – strategies that serve to define and influence the outcomes of the bargaining process.

More importantly, this project takes into account not only issue linkage and bargaining strategies, but also analyzes the important role of *information*. As argued by Walton and McKersie: "The role of information or the lack of information is of such tactical importance in distributive bargaining that it needs to be handled at the outset. It affects all the other tactical operations" (Walton and McKersie 1965: 40). It is therefore important to take into account the role of information and actors' strategic choices related to the sharing or hiding of private information about their interests in incomplete information bargaining settings.

3.4 LOGIC FOR EVALUATING IMPLICATIONS OF ISSUE LINKAGE

The discussion above highlighted an important characteristic of issue linkage that can impact the bargaining strategies players choose to adopt. Building upon this logic, the remainder of this chapter evaluates the implications that issue linkage with different distributional patterns can have on the strategic choices that players involved in a bargaining interaction will make.

Players' decisions whether or not to truthfully reveal their interests are an important strategic choice that intervenes between the issue linkage structure of the bargain and the actual bargaining strategy adopted by each player. Given the sequential nature of these strategic choices, a backwards induction type of logic is adopted here to evaluate each choice and the interaction between them.

The first important step in this argument is to evaluate the effect of truthful revelation or strategic misrepresentation on bargaining strategies. The second step then builds upon these effects to evaluate the impact of variations in the distributional patterns of the issue linkage bargaining structure on players' claims of interest and bargaining strategies.

3.5 STEP 1: EFFECT OF CLAIMS OF INTEREST ON BARGAINING STRATEGIES

3.5.1 Bargaining Strategies: “Cooperative v. Non-Cooperative Bargaining”

As laid out in Chapter 1, bargaining strategies are defined here in terms of the degree to which the willing making of offers that are Pareto-superior for states not making the offer characterizes the overall strategy of a state engaged in a bargaining situation. In other words, it represents *the degree to which a state's bargaining strategy consists of willingly offering concessions to other states*.

The cooperative ideal type is therefore captured by the willing offering of concessions. In contrast, the non-cooperative ideal type is characterized by the adoption of tactics designed to *extract* concessions from other players. In particular, it is characterized by the use of threats and commitments (Schelling 1960), as well as moves to alter one's best alternative to a negotiated agreement, or to alter others' perceptions of those alternatives (Walton and McKersie 1965).

As discussed below, the effectiveness of different types of tactics are impacted by the information that the players have about the interests of the other players involved in the bargain. This has important implications for the strategic decision of whether or not to truthfully reveal one's interests to the other players involved in a bargaining interaction.

3.5.2 Non-Cooperative Bargaining and the Role of Incomplete Information

The effectiveness of non-cooperative bargaining strategies relies on the strategic manipulation of information to extract concessions from other states through the use of tactics such as “threats” to worsen the status quo absent concessions and “commitments” to a particular position or future strategy (Schelling 1960), and moves to alter the players’ best alternative to a negotiated agreement or to alter others’ perception of those alternatives (Walton and McKersie 1965).

These tactics have a credibility problem in the face of full information. For threats adopted by player i to be effective in extracting concessions, player $-i$ has to believe that player i has an incentive to carry out the threat, potentially making herself (in addition to player $-i$) worse off. The same is true for the effectiveness of commitments (e.g., claims to veto agreements that do not meet the demands reflected in a state’s position): player $-i$ has to believe that player i would actually prefer no agreement to a lesser offer of concessions than is demanded.

These strategies are all tied to each player’s beliefs regarding the other player’s best alternatives to agreement. All tactics designed to alter perceptions of the alternatives to agreement on which these threats and commitments are based (and to therefore make these threats and commitments more credible) are predicated on uncertainty in the bargaining game, and the ability of players to manipulate information regarding their interests and alternatives. Private information about one’s interests and alternatives is therefore a key component to making these non-cooperative strategies effective in extracting concessions from other players.

3.5.3 Cooperative Bargaining and the Role of Shared Information

Cooperative bargaining, characterized by willing concession-making, can be impeded by a lack of information about where the other actors most desire concessions. In complicated negotiations “where uncertainties loom large,” there may be agreements that are far better for each player than the no-agreement alternative, but because of the high degree of uncertainty and private information, it may be very difficult for the players to identify the necessary characteristics of these agreements (Riaffa 1982: 144).

In other words, because the values of c_{1X} , c_{2X} , c_{1Y} and c_{2Y} are central in defining the payoffs each player potentially receives from a bargaining outcome, and whether these payoffs exceed the costs of negotiation, for the players to be able to effectively choose their concession offers, they need to have information about the interests of the other player. Shared information about one’s interests is therefore a key component necessary to make cooperative bargaining strategies effective in bringing about mutually beneficial bargaining agreements.

3.5.4 Lack of Truthful Revelation and Non-Cooperative Bargaining

Overall, the lack of information about player i ’s interests makes player $-i$ more susceptible to bargaining strategies adopted by player i , and designed to extract concessions from player $-i$. Given the uncertainty that exists when players do not truthfully reveal their interests, the players cannot be sure whether the threats, promises, and commitments made by the other state, and which compel them to offer concessions, are credible or not. They do not have enough information to fully evaluate whether a commitment or threat is actually one that the player has

or does not have a true incentive to carry out. States that desire a bargaining agreement or that are disadvantaged by the status quo may thus be manipulated by these types of strategies.

The strategic choice to *not* truthfully reveal one's interests is an important decision that facilitates the adoption of concession-extracting bargaining tactics (i.e., non-cooperative bargaining strategies). In addition to the lack of truthful revelation of interests, the actual strategic misrepresentation of information (intended to alter the other player's perception of interests and alternatives) can add to the effectiveness of these concession-extracting tactics.

Finally, the uncertainty that exists in most bargaining settings impedes the ability of players to effectively identify mutually-beneficial agreements and the extent to which concessions could or need to be offered to achieve those agreements (Walton and McKersie 1965; Rieff 1982). Despite the incentive to exchange concessions in some bargaining situations (i.e., bargaining structures with offsetting distributional patterns), players still face an incentive to offer the lowest possible concession necessary to make the other player willing to offer concessions as well. Because of these incentives, lack of information can lead to concession offers that are not "large enough" to sustain the offer of concessions from the other player. Lack of information can impede players' ability to identify the extent to which concessions could or need to be offered to achieve mutually beneficial agreements.

3.5.5 Truthful Revelation and Bargaining Strategies

Conversely, the truthful revelation of information obstructs the effectiveness of non-cooperative bargaining strategies and facilitates the adoption of cooperative bargaining strategies. Truthful revelation of interests impedes the effectiveness of non-cooperative bargaining strategies, because such strategies face a significant credibility problem in the face of full information.

Their effectiveness in extracting concessions is significantly lessened when the target player $-i$ knows that player i does not have an interest in actually carrying out the threats and commitments made.

In addition, truthful revelation facilitates the adoption of cooperative bargaining strategies by allowing players to identify the values and characteristics of concessions necessary to yield positive payoffs for each player, thereby increasing the possibility of reaching a mutually beneficial agreement.

3.5.6 Effects of Claims of Interest

The truthful revelation of interests is a key step for players to be able to exchange concessions and reach a mutually beneficial bargaining agreement. It also is a key factor impeding the adoption of concession-extracting bargaining tactics. Conversely, players' strategic choice to *not* truthfully reveal their interests impedes their ability to exchange concessions and enhances their ability to effectively adopt concession-extracting tactics (i.e., non-cooperative bargaining strategies). Together, these effects have important implications for the impact of issue linkage bargaining structures on the strategies players can and will adopt, as discussed below.

3.6 CONDITIONS FOR TRUTHFUL REVELATION

As described above, truthful revelation is central to the ability of players to effectively exchange concessions and reach mutually beneficial outcomes. However, players may also face potential *costs* for truthfully revealing their interests.

First, a player who truthfully reveals her interests will be unable (or less able) to strategically misrepresent her interests on this issue in future bargains with any players, both within or outside of the game of interest, that observe the truthful revelation. If a player truthfully reveals a given issue as relatively *unimportant* to her interests, she will be less able to claim a large interest in this issue to try to extract concessions on other issues in future negotiations – a hard bargaining tactic often recommended to negotiators (see Riaffa 1982: 143). If a player truthfully reveals a *large* degree of interest at stake on an issue, she reveals this issue as one in which she is highly sensitive. A player who truthfully reveals her interests thus potentially open herself up to exploitation by other players that can capitalize on this weakness. In particular, this truthful revelation highlights a players' relative dissatisfaction with the status quo on a given issue, and thus highlights her bargaining weakness in future negotiations on this issue.³¹

For truthful revelation to occur, which then fosters concession-offering, the *benefits* of doing so have to outweigh the costs. In addition, there must be some potential *cost* to strategic misrepresentation – the *loss* of these potential payoffs.³²

³¹ Formally, this weakness can be captured by the per-unit-time costs to remain at the status quo which define the winner and loser in War of Attrition bargaining models. When interests are revealed, this information is known to others. Thus, players who truthfully reveal their interests become susceptible to exploitation by players who recognize their own costs to remain at the status quo as less, thus recognizing that they will likely win the bargaining game.

³² For an intuitive description of the necessity of the benefits of truthful revelation outweighing any costs to doing

These costs can be taken into account in the basic bargaining model laid out above. The actual value of these costs depends on several parameters not directly considered here. First, the transparency of a bargain makes other players outside the bargaining process able to see the interests of players who truthfully reveal their interests. Thus, transparency of the bargain may raise the costs of truthful revelation. Second, trust between the players may impact whether the player to whom the truthful revelation was made will use that information in future interactions against the player who truthfully revealed. These are not discussed here in detail, but are important points to consider in future analyses.

In general, *any* costs to the claims of interest (either truthful or not) can be included in the v parameter which takes into account the overall costs of bargaining. Thus, in addition to overcoming any transaction costs associated with the act of engaging in a bargaining interaction, the potential benefits from the strategic choice to truthfully reveal interests and exchange concessions must also overcome the costs associated with truthful revelation. Given the inclusion of these costs in the model, inferences about structural bargaining conditions under which truthful revelation and concession-offering can be fostered can thus be drawn.

3.7 STEP 2A: EFFECT OF NON-OFFSETTING DISTRIBUTIONAL PATTERNS

A lack of offsetting distributional patterns can take several possible forms: (1) the players are bargaining on only one issue; (2) the issues are not differently valued by the players; (3) the issues are differently valued but cannot overcome the costs of bargaining (which include the

so, and the fact that this results in a greater utility than any other claims of interest, see (Farrell 1989: 118-119).

costs of truthful revelation). In the first two cases, there are no possible benefits to concession-offering or to the truthful revelation of interests – only costs. In the third case, there is a potential benefit to concession-offering, but these benefits cannot overcome the transaction costs of bargaining combined with the costs of truthfully revealing interests.

Without benefits to concession-offering, which are *necessary* to sustain truthful revelation, the costs of truthful revelation (built into the v term) cannot be overcome. The central driving feature that serves to create an institutional structure which fosters the truthful revelation of interests – that the benefits of doing so outweigh the costs – does not characterize bargaining games structured by issues which do not possess offsetting distributional patterns. Truthful revelation is therefore neither fostered, nor predicted, in these types of bargaining games. As discussed above, the lack of truthful revelation impedes concession-offering strategies and fosters concession-extracting strategies.

Because they play a role in defining the utility functions of the players, structural conditions also add to players' incentives to adopt non-cooperative bargaining strategies. Given the negative payoff for any move toward the ideal point of the other player, states will not willingly offer concessions in equilibrium, and either need to be coerced, “tricked,” or “paid off” to move the bargaining outcome away from their own ideal point. In other words, states must be forced via threats or commitments, “tricked” by strategically misrepresenting interests, or offered side payments to make these types of moves in the bargaining space (e.g., Schelling 1960; Walton and McKersie 1965; Rieff 1982). In this type of bargaining setting, non-cooperative bargaining strategies are potentially effective, and provide a potentially large payoff to a player that adopts them. In contrast, offering concessions yields a negative expected payoff. Absent the presence of the offsetting distributional patterns which can provide potential benefits to the

adoption of cooperative bargaining strategies, states are expected to adopt non-cooperative strategies, and not offer concessions to other states.

The incentives created by the institutional (game structure) to adopt non-cooperative strategies does not mean that “truthful revelation” is an unimportant mechanism in international bargaining. The effectiveness of non-cooperative bargaining strategies rests on uncertainty, thus the inability or unwillingness of players to truthfully reveal. This is not necessarily a surprising finding, but it is an important step that has often been either implicitly assumed or overlooked as a central connecting mechanism in previous issue linkage literature (e.g., Tollison and Willett 1979; Sebenius 1983; Axelrod and Keohane 1985; McGinnis 1986; Morgan 1990; Morrow 1992; Martin 1994; Lohmann 1997). Its importance is underscored by the fact that truthful revelation *is* expected under certain conditions, as discussed in the next section.

3.8 STEP 2B: EFFECT OF OFFSETTING DISTRIBUTIONAL PATTERNS

As shown in the bargaining discussion above, the existence of offsetting distributional patterns means that there are potential benefits from the exchange of concessions, and those benefits are greater the more offsetting are the distributional patterns of the issues that structure players’ bargaining interactions. Therefore, the more offsetting are the distributional patterns of the linked issues, the greater are the potential benefits of truthfully revealing interests, which facilitates the exchange of concessions.³³ If the distributional patterns of the issues provide enough potential benefits to overcome the costs of bargaining (including the costs of truthful

³³ In other words, holding all else constant, as $|w_1 - w_2|$ increases, the payoffs from exchanging concessions on the issues of lesser importance increases.

revelation), the truthful revelation of interests is incentivized. In other words, offsetting distributional patterns create an institutional bargaining structure in which truthful revelation will yield a payoff at least as great, or greater than, any other claim of interests. Therefore, by definition, linking issues with offsetting distributional patterns creates what is referred to by the mechanism design literature as an “incentive compatible mechanism” (Myerson 1979; Myerson 1983; McAfee and McMillan 1988; Myerson 1991; Miller and Hammond 1994; McCarty and Meirowitz 2006).

A main finding of this literature is that, in bargaining, no incentive-compatible mechanism can be efficient without outside subsidies (Myerson and Satterthwaite 1983), where “outside subsidies” can be understood as payments external to the specific bargain or trade taking place. This project demonstrates, however, that issue linkage can form a type of subsidy that is not external to the bargaining process. It is thus a way that truthful revelation of interests can be fostered among states engaged in bargaining interactions, and a method that can be fairly easily manipulated by institutions and mediators. This finding is both interesting and potentially important, in and of itself. Thus, central to this dissertation is the recognition that truthful revelation of interests brought about by issue linkage structures with offsetting distributional patterns is an important step leading states to adopt cooperative, rather than non-cooperative, bargaining strategies, and that structures that incentivize truthful revelation can be created without externally-generated side payments or subsidies.

3.9 ROLE OF INFORMATION

It is important to note that because the truthful revelation of interests also carries with it some costs that impact the value of the parameter representing costs accrued in the bargaining process, v , the truthful revelation of interests is not perfectly correlated with the distributional patterns variable. Therefore, holding all else constant, some values of w_1 and w_2 that may lead to cooperative bargaining in a complete information setting would not in an incomplete information setting. This is because the value of v (the overall costs of bargaining) is increased enough by the costs of truthful revelation that the potential benefits from concession-offering are no longer enough to overcome both the transaction costs of bargaining *and* truthful revelation taken together. Thus, the role of information is an important one to take into account, and the truthful revelation of interests arises as a central causal mechanism connecting the issue linkage bargaining structure and the types of bargaining strategies adopted by players.

3.10 KEY IMPLICATION

The preceding discussion leads to a central finding related to the conditions under which players will willingly offer concessions (i.e., adopt cooperative bargaining strategies) when engaged in a bargaining interaction. In particular, the discussion above shows that the greater the value of $|w_1 - w_2|$, the more “offsetting” are the distributional patterns of linked issues. As these distributional patterns become more offsetting, the potential payoff to each player that is derived from concession-offering increases. The linkage of issues with offsetting distributional patterns transforms what would have been a zero-sum game into a positive-sum game. The increase in

the potential benefits from concession offering provides states incentives to truthfully reveal their interests and imposes costs for not doing so. Truthful revelation facilitates the adoption of cooperative bargaining strategies and obstructs the adoption of non-cooperative strategies, and together with the offsetting issue linkage structure leads players to adopt more cooperative bargaining strategies.

Absent the linkage of issues with offsetting distributional patterns, any potential benefits of truthful revelation and cooperative bargaining cannot outweigh the costs of doing so. Thus, when bargaining over issues without offsetting distributional patterns, players will not truthfully reveal their interests and will adopt non-cooperative, concession-extracting bargaining strategies.

This leads to the central implication of this argument: *the more offsetting are the distributional patterns of the issues over which states bargain, the greater is their incentive to truthfully reveal their interests and thus the more cooperative their bargaining strategies will be.*

3.10.1 Towards a Testable Hypothesis

While providing an important base for building this theoretical argument, the model used to derive these predictions is a very abstract representation of international bargaining. Constructing a more empirically-grounded theory based on this model will allow for an empirical test to be carried out which takes into account many of the mitigating factors that are held constant and assumed away in the abstract discussion presented here. This theoretical argument is developed in the next chapter.

4.0 A THEORY OF COOPERATIVE BARGAINING

Why, and under what conditions, will states adopt more cooperative types of bargaining strategies, rather than the non-cooperative strategies they are often assumed to employ? In particular, how does the institutional structure within which states bargain impact this decision? Addressing these questions, Chapter 3 built a theory to analyze the relationship between the institutional (game) structure of state bargaining interactions and the cooperative nature of the bargaining strategies they adopt. To do so, it analyzed a strategic interaction of two players engaged in a bargaining interaction over two linked issues. This theory-building exercise demonstrated that when the two players each place a high degree of importance on different issues, as their relative valuation of the issues becomes more disparate, the incentives for the players to truthfully reveal their interests and willingly offer concessions increases. In other words, connecting this finding to the concepts presented by this dissertation, as the distributional patterns of issues become more offsetting, players are more likely to adopt cooperative bargaining strategies. Chapter 3 further demonstrated that this relationship should exist *even if* the players have antithetical interests on the issues.

This chapter builds upon this central finding to construct a more empirically-grounded theoretical argument. To do so, this chapter draws, in particular, on bargaining interactions in the European Union (EU). The case of the EU not only allows for a connection between the logic presented in Chapter 3 and empirical cases of interstate bargaining, but also, for purposes

of research design, it is a setting with specific characteristics which allow for an empirical test assessing the hypotheses and implications of the theoretical argument with a high degree of internal validity. Using this more empirically-grounded theoretical argument, this chapter then derives a testable hypothesis and observable implications which can be used to connect the theoretical argument to real-world cases of bargaining among states.

4.1 THE NEED FOR AN EMPIRICALLY-GROUNDED THEORY

The theory-building effort in the previous chapter modeled a simple strategic interaction of two players engaged in bargaining over two issues. This theory building exercise led to a central prediction: as the distributional patterns of issues become more offsetting, players are more likely to adopt cooperative bargaining strategies. Several factors, though, necessitate a more detailed and empirically-grounded argument to allow for a valid empirical test.

First, the theory-building effort in the previous chapter presented an abstract ideal-type rational choice argument. Following the neo-institutionalist literature (e.g., Shepsle 1989; Crain and Tollison 1990; Tsebelis 1990; Krehbiel 1991; Cox and McCubbins 1993; Shepsle and Weingast 1994; Döring 1995; Strøm 1995; Scharpf 1997), it presented an argument about the strategies players will adopt based only on the institutional constraints within which they are acting. In real world cases of international bargaining, however, there are many additional mitigating factors which may affect the bargaining strategies that states adopt. These factors, assumed away in the more abstract bargaining model in the previous chapter, need to be taken into account when analyzing the empirical predictions of this model.

Second, the connection between issues with offsetting distributional patterns and state bargaining strategies needs to be theoretically explicated in a way such that observable implications of the theorized relationship can be identified. Without this step, the causal mechanisms underlying the model and theory cannot be empirically evaluated.

Together, these factors necessitate a more detailed and empirically-grounded theory. This chapter modifies and extends the discussion in Chapter 3 to apply to EU bargaining. First, it reviews the concepts of interest and the central argument regarding the relationship between these concepts. It then summarizes the process of bargaining in the EU and applies this theory to these bargaining interactions, deriving empirically testable hypotheses and observable implications. It then constructs a research design for testing the argument.

4.2 CENTRAL THEORETICAL CONCEPTS

4.2.1 Dependent Variable – “Cooperative Bargaining”

Chapter 3 formally defined players’ bargaining strategies in terms of the values of the parameters c_{1X} , c_{2X} , c_{1Y} , and c_{2Y} . This definition directly corresponds to the non-formalized concept of “cooperative bargaining,” defined in Chapter 1 as “the degree to which a given state’s bargaining strategy consists of willingly making offers that are Pareto-superior for other states engaged in the bargaining interaction” – i.e., the degree to which concessions are willingly offered by a state. If concessions were not offered by player i on issue j , then $c_{ij} = 0$. If concessions were offered by player i on issue j , then $c_{ij} > 0$. The greater the value of c_{ij} , the more “cooperative” is a given bargaining strategy, according to this definition.

The theoretical argument presented below uses this concept of cooperative bargaining to apply this understanding of bargaining strategies to real-world cases of international bargaining, allowing for the empirical observation and measurement of these bargaining strategies.

4.2.2 Main Independent Variable – “Offsetting Distributional Patterns”

Analyzing the conditions under which states will offer concessions in equilibrium (i.e., adopt cooperative bargaining strategies), the analysis in Chapter 3 identified one important characteristic of the structure of the bargaining game which directly impacts players’ strategic choices – the relative valuation (in terms of payoffs) of the linked issues to the players. This formal characteristic of the issues which structure states’ bargaining interaction is easily identified in an abstract way in the simple two-actor, two-issue bargain – the values of w_1 and w_2 . However, in empirical cases of bargaining with various numbers of bargaining states and different numbers of issues over which those states bargain, the measurement of this main independent variable is not as straightforward.

Addressing this problem, Chapter 3 demonstrated that the relative value of the payoffs from linked issues is analogous to the concept of “offsetting distributional patterns” in the issue linkage literature. In addition, Chapter 3 extended this concept from a dichotomous to a continuous conceptualization. Building on the conceptualization and definition in the current literature and this more nuanced conceptualization, the idea of “offsetting distributional patterns” can therefore be used to extend the argument beyond the simplified two-player, two-issue interaction.

4.3 THEORY OF COOPERATIVE BARGAINING

Chapter 3 used a formalized logic of two players bargaining over two issues to derive the following argument, which connects the central concepts described above. In particular, it argued that as the distributional patterns of the issues linked together to structure their bargaining interaction become more offsetting, the potential payoff to each state that is derived from concession-offering increases. The increase in the potential benefits from concession offering provides states with incentives to truthfully reveal their interests and costs to not doing so. This truthful revelation facilitates the adoption of cooperative bargaining strategies and obstructs the adoption of non-cooperative strategies, and together with the offsetting issue linkage structure will lead players to adopt more cooperative bargaining strategies.

Absent the linkage of issues with offsetting distributional patterns, any potential benefits of truthful revelation and cooperative bargaining cannot outweigh the costs of doing so. Thus, when bargaining over issues without offsetting distributional patterns, players will not truthfully reveal their interests and adopt non-cooperative, concession-extracting bargaining strategies.

This leads to the central implication of this argument: the more offsetting are the distributional patterns of the issues over which states bargain, the more cooperative their bargaining strategies will be, holding all else constant.

4.3.1 Towards an Empirical Test

The central argument of this project is that the concepts of “offsetting distributional patterns” and “cooperative bargaining” and their hypothesized relationship can be applied to, and used to analyze

and better understand, a wide variety of state bargaining interactions. However, in order to empirically *test* this argument in a valid and reliable way, this project specifically focuses on the application of this general theoretical argument to bargaining among the member states of the European Union. In doing so, this chapter derives several observable implications related to this theory at work in this particular bargaining setting.

4.4 APPLICATION TO THE EUROPEAN UNION (EU): WHY THE EU?

For three important reasons, bargaining in the European Union (EU) is a particularly applicable case which can be used to perform an empirical test of the dissertation's theoretical argument. First, the EU has particular rules governing its bargaining interactions that largely serve to exogenize the set of issues over which the member states bargain. Second, examining bargaining within the EU allows many potential mitigating factors to be held constant, while the main variables of interest and potential alternative explanations of cooperative bargaining vary. Though these issues of research design are the key factors driving this case selection, it is also important to note that by applying this theoretical argument to the EU, this project can add to the study of EU decision-making, as well as build an analysis which can connect the EU to the study of international institutions more generally.

4.4.1 Case of the EU: The Exogeneity of the Issue Linkage Structure

Because the distributional patterns of linked issues are modeled as a part of the game structure of the bargaining interaction, in this theoretical argument, the issue linkage structure is assumed to

be exogenous to the bargaining interaction of the member states. While this does not mean that the argument cannot speak to bargains in which issue structures are endogenous to the interaction, these types of interactions cannot be used to test it. However, absent a pure experimental research design, any cases drawn from real-world cases of bargaining cannot reflect this ideal-type exogeneity – i.e., the perfectly random assignment of different issue structures to different bargains. However, on a continuum from a perfectly random and exogenous assignment of the independent variable to a perfectly endogenous assignment (Dunning 2007), the proposals made by the EU institutions come fairly close to the exogenous ideal-type desired in an empirical evaluation of this argument.

The EU is therefore a useful context for testing this argument, because within the EU's decision-making structure, the procedure for linking issues to structure member state bargaining is highly institutionalized, and the power to link issues resides with institutions that are not controlled by the member states. The proposals which lay out the issues over which the member states bargain come from the European Commission and the Council Presidency. These are institutional entities separate from the member state representatives and their bargaining interactions, and which possess their own particular interests that they would like to see reflected in the EU legislation. It is these interests which, to a large extent, drive the adoption of a particular issue structure over which the EU member states bargain. In addition to this general characteristic, the case studies will be used to empirically demonstrate the relative exogeneity of the issue structure in each bargaining case examined.

4.4.2 Case of the EU: Importance for Research Design

Conducting the analysis in this empirical setting also allows for a research design which approximates, as closely as possible, an experimental design. Examining bargaining interactions within the EU allows for many different institutional and other mitigating factors to be held constant while the variables of interest vary. Furthermore, variation on independent variables of interest as alternative explanations can be controlled through the selection of the cases of bargaining that are analyzed.

By examining bargaining within the EU setting, many potential mitigating factors can be held constant while the main dependent and independent variables vary. This permits an empirical test with a high degree of confidence that the effects attributed to offsetting distributional patterns stem from this institutional feature. As will be described in more detail in the section analyzing potential alternative explanations, these mitigating factors include the possibility that the individuals representing each state has its own bargaining approach which impacts the bargaining strategies adopted, that the particular international context within which a bargain is situated impacts bargaining strategies, and that the norms and rules of interaction impact bargaining strategies. The cases analyzed all take place within the EU in a brief time-span (2004-2007), holding these potential mitigating factors largely constant in the empirical test.

It should be noted that in choosing to analyze cases of bargaining among the member states of the EU, there is a trade-off between internal and external validity.³⁴ Internal validity has been given priority in this research design. While the theoretical argument presented here is

³⁴ For a discussion of this trade-off, see (Peters 1998: 48-49).

a general one, to construct an empirical test with a high degree of confidence that the hypothesized causal relationships are driving the findings in the empirical cases (i.e., that the test has internal validity), a research design which carefully controls for the many potential mitigating factors is necessary. This research design is aimed at highlighting these causal relationships to demonstrate with a high degree of confidence that this theory “works” in at least a subset of cases of international bargaining. In addition, the bargaining interactions in the Council of Ministers that are examined here, despite taking place in the EU, are interactions that are intergovernmental rather than supranational in nature, and are thus important interactions that can then be used to begin to generalize beyond this institutional setting. Chapter 10 will lay out paths for future research in order to expand the external validity of the empirical test.

4.4.3 Contribution to the EU and IR Literatures

Finally, analyzing bargaining in the EU is important because the theory presented above offers important insights and contributions to the study of EU decision-making. The most significant contribution stems from the study’s effort to bring the European Union more squarely into the field of international relations and the study of international institutions. Many scholars studying both IR and the EU consider the EU to be *suis generis* – an institution for many reasons different from other international institutions. In particular, the EU is assumed to be characterized by more cooperative types of dynamics than those thought to characterize most interstate interactions. However, the particular factors that lead to dynamics in the EU that differ from those of other institutions are often not analyzed in a rigorous way.

This project argues that the type of bargaining strategies adopted by states depends on the characteristics of the states’ interests across the set of issues linked together to structure a

bargain. Issues with offsetting distributional patterns create a bargaining setting in which the truthful revelation of interest and the adoption of cooperative bargaining strategies are fostered. Thus, this project provides an analysis of specific institutional factors that lead to the adoption of cooperative bargaining strategies, rather than the competitive strategies often assumed to exist in most international bargaining settings in empirical and theoretical analyses (Krasner 1991; Moravcsik 1998; Morrow 1999).

The EU therefore may not be *suis generis*, but rather, may have particular institutional features which can be compared to and analyzed across different international bargaining settings that may lead to interactions among the member states of the European Union that often differ from other state interactions. Gaining a better understanding of these particular institutional features – and how they are similar to and different from other international organizations – can allow for the appropriate application of IR theories to better understand the EU, as well as the utilization of the EU to build and further develop IR theories of the role of international institutions. By examining one such institutional feature – offsetting distributional patterns – this project takes a first step towards this goal.

The theoretical argument posited here further addresses a central debate in the study of the factors of EU decision-making that are important for explaining outcomes of the decision-making process. Some scholars cite the importance of state power in EU decision-making – power that is present in most other international decision-making and bargaining processes. These scholars argue that it is the large and powerful states that dominate EU bargaining processes, and whose interests are reflected in the agreements reached (e.g., Moravcsik 1998). Conversely, some scholars point to the important role that small states play in EU decision-making, despite their lack of power in the conventional sense (Egeland 1988; Coolaset and

Soetendorp 2001; Arter 2002; Ingebritsen, Neumann et al. 2006), or highlight socialization and more cooperative dynamics and factors, which they argue dominate decision-making in the EU (e.g., Lewis 1998; Lewis 2002; Lewis 2005). Whether the EU is characterized by competitive and power-oriented interactions or by more cooperative dynamics is thus an important and unresolved debate.

Rather than arguing that the EU is characterized by one type of dynamic or the other, this theory presents a more nuanced argument about the conditions under which these different types of dynamics should be observed. It argues that states bargaining over issues with offsetting distributional patterns will adopt more cooperative bargaining strategies, while bargaining among these same states with different issue structures will result in their adoption of more competitive bargaining strategies. Thus, by bridging this divide in the literature, this study argues that both types of dynamics can be present in EU decision-making. The dynamics that should be empirically observed in a given case depends on the character of the issues which structure that bargaining interaction. Applying this theory to the case of the EU not only allows for the construction of a research design to test this argument, but also allows this project to make important contributions to the study of the EU and its relevance to the IR literature.

Given the importance of the EU case for the application and testing of this theory, the remainder of the chapter is dedicated to the application of the argument to EU bargaining and the construction of a research design to test it.

4.5 BARGAINING IN THE EUROPEAN UNION

Two different types of bargaining take place among the EU member states. The first, and most widely studied bargaining interactions are the negotiations that take place among EU member states over the creation of new EU treaties (e.g., Moravcsik 1998; Slapin 2006). While these are central negotiations in the EU, the issues over which the member states bargain can be, and often are, altered by the member states themselves within the course of the negotiations. In these cases, then, the issue structure is not something which can be treated as largely exogenous to the bargaining interaction taking place among the EU member states. Therefore, while the theory developed for the dissertation may apply and help to better explain these bargaining interactions, they cannot be used to explicitly *test* the theory.

There is a second, often overlooked, set of bargaining interactions relating to the creation of “everyday” EU legislation that takes place among the EU member states within the decision-making institutions of the European Union. Within the institutional structure of the intergovernmental Council of Ministers, member state representatives engage in bargaining over issues laid out in proposals presented by the European Commission or Presidency.

4.5.1 Source of Issue Linkage Structure: The European Commission

In the European Union, the European Commission and Council Presidency are the two sources of proposals which set the issues that structure each bargaining interaction among the member state representatives. These institutional entities have their own interests which drive, to a large

extent, the adoption of a particular issue structure over which the member states then bargain.

The European Commission (hereafter, “Commission”) is the most important and central source of the issue structure, as it has the sole right of legislative initiative (Peterson 2002). In other words, the Commission is the only source of proposals for new legislation within the European Union.³⁵ Each Commission proposal sets the agenda and lays out the issues for the negotiations among EU member states within the institutions of the Council of Ministers.

Several scholars have demonstrated that the proposals forwarded by the Commission (and thus the issues included in them) are the result of the Commission’s own institutional interests. These interests include issue-specific interests, an overall desire to increase its own institutional power relative to other EU institutions (Pollack 2003: 385), and a strong preference for further integration (Pollack 2003: 384-5). In addition, these proposals and their particular issue structure have been shown to be the result of political competition and coordination among different, sometimes competing interests and preferences within the Commission itself (e.g., Peters 1992; Hooghe 2001). Thus, it is the Commission’s own institutional interests, decision-making processes, and internal politics that largely determine the structure of the legislative proposals they present to the member states in the Council of Ministers, and which lay out the issues that structure their negotiations.

Examining this agenda-setting function, scholars have explicitly studied and empirically demonstrated the separation of the Commission from the interests and control of the member states when designing and structuring these proposals (Pollack 1997; Pollack 2003; Pollack 2006). Member states do, however, lobby the Commission in an attempt to influence these

³⁵ This *sole* right of initiative applies officially only to the “first pillar” of the European Union – legislation on issues other than foreign policy and justice and home affairs policy. However, the Commission is most often the source of the proposals in these other policy areas as well. In the cases that are examined in this study, all proposals originated with the European Commission and are therefore largely separate from the member states’ interactions.

proposals. The issue structure set by these proposals is therefore not *perfectly* exogenous. However, the interests and politics within the Commission, and the important role these play in driving the proposals, help to locate the assignment of the issue structure closer to an “as if” random assignment on the continuum from perfect exogeneity to perfect endogeneity (Dunning 2007) than many other international bargaining situations in which the issue linkage structure is set by the states themselves.

4.5.2 Source of Issue Linkage Structure: The Council Presidency

The second source of proposals which structures the bargaining among EU member states in the Council of Ministers institutional structure is the Presidency of the Council (hereafter, “Presidency”).³⁶ The Presidency plays an important mediating role in the bargaining interactions that take place among EU member states (Metcalf 1998; Dür and Mateo 2006). In this mediation role, the Presidency can present new, modified proposals to the member states over which they then engage in a new bargaining interaction.

Like the Commission, the Presidency makes these proposals largely based on their own interests. Rather than their particular national interests, as the Presidency, it is argued that these proposals are made in the interest of reaching an agreement (Metcalf 1998). Importantly, as described in Chapter 1, bargaining cooperation as defined by “reaching an agreement” is *not* what is meant by cooperative bargaining. Cooperative bargaining refers to a particular *character of interaction* and bargaining strategies, irrespective of whether an agreement is reached.

³⁶ The Presidency also possesses a degree of agenda-setting power in the Council because it can choose which issues to prioritize – thus forwarding or delaying agreement on particular issues (e.g., Kirchner 1992; Kollman 2003; Tallberg 2006). This type of agenda-setting role, though, is not related to the particular structure of the proposals.

These proposals can therefore also be treated as largely exogenous to the bargaining interactions among the EU member states. However, because these modified proposals are made within the course of bargaining interactions, their potential endogeneity needs to be carefully considered. When analyzing the bargaining interactions that take place following Presidency proposals, careful attention should be paid (and account taken in the empirical analysis) of the particular character of the bargaining interaction that *preceded* the new proposal.

4.5.3 Issue Areas in EU Bargaining

Bargaining interactions in the EU take place in a wide variety of issue areas – from more domestically-oriented environmental and economic policies, to police cooperation, immigration policy, and even foreign and defense policies. In addition, the bargaining interactions in the EU vary widely in the degree to which the bargains are politicized and publicized.

Finally, in addition to this general variation in the types of issue areas, the EU has different decision rules to protect areas that are highly sensitive to the member states. Foreign and defense policy is subject to a unanimity decision-rule. Justice and home affairs issues also have typically been subject to unanimity voting rules.³⁷ In contrast, more technocratic issues areas including economic and environmental policies that impact member states require only a qualified majority to take decisions at the EU level. While this distinction does not perfectly correspond to the “high-low” politics distinction often made in the general IR literature, the underlying idea is the same – i.e., there are some issues that are highly protected by states, due to

³⁷ Discussions and steps are currently being taken to transfer several issues including criminal law and police cooperation to Pillar I of EU legislation to “improve the effectiveness” of policy-making in these fields. They will then be subject to co-decision decision making processes, and thus subject to a qualified majority (rather than unanimity) decision-rule. In the justice and home affairs cases examined in the dissertation, the unanimity rule was still in effect.

the implications of such issues for national sovereignty, and others about which they are less concerned (Teasdale 1996; Den Boer and Wallace 2000).³⁸ In the EU, this decision-rule is therefore often argued to reflect the high-low politics distinction.³⁹

Using the EU case to analyze this project's argument let us evaluate how well the theory applies across different types of bargaining interactions – in different issue areas, with different degrees of politicization, and different decision rules/high-low politics issues – while holding the EU setting and the member states engaged in the bargaining interactions constant.

4.5.4 Summary: The EU Case

To analyze the theory, this study examines intergovernmental bargaining within the Council of Ministers' institutional structure. Three main institutions comprise the intergovernmental structure – Working Groups, the Committee of Permanent Representatives (COREPER), and the Council of Ministers. In each, member states engage in bargaining interactions over various issues proposed by the European Commission and/or Presidency.

Bargaining begins in issue-specific Working Groups composed of experts in different policy areas. Issues which cannot be solved at this level, move up to the COREPER level, which is composed of Permanent Representatives of the EU member states. These are diplomatic appointees, and they bargain over a wide array of issues areas. There are two main COREPER formations. COREPER I is composed of Deputy Permanent Representatives who engage in

³⁸ Monica Den Boer and William Wallace (2000) argue this relating particularly to Justice and Home Affairs matters. "The preservation of domestic order from the threat of external order, the distinction between national territory and foreign lands and between the citizen and the alien, are fundamental aspects of national statehood, sovereignty, and identity" (Den Boer and Wallace 2000: 496).

³⁹ For example, see (Garrett 1995), arguing that the "high politics" areas are still governed by unanimity voting, and thus the most recalcitrant government is still able to set the pace of integration in these areas.

bargaining over several different central policy areas (corresponding to particular Council formations) – environment, employment, social policy, health and consumers, agriculture and fisheries, transport, telecommunication and energy, internal market and competition policy, and education, youth and culture. COREPER II is composed of Permanent Representatives who engage in bargaining over issues including justice and home affairs policies, budget, institutional and horizontal questions, and general affairs (Lewis 2002).

Issues which cannot be solved at the COREPER level are passed on to the Council of Ministers. There are several different Council formations, separated by issue area.⁴⁰ This institution is composed of the relevant ministers from the governments of the member states (according to issue area). The ministers are present as representatives of their governments and are authorized to commit their governments to any agreements reached (Hayes-Renshaw 2002; Hayes-Renshaw and Wallace 2006). In addition to engaging in some bargaining over issues which could not be decided at the lower institutional levels, the Council of Ministers “officially” adopt (i.e., “rubber stamp”) the agreements reached at the COREPER and Working Group levels. A large majority of agreements are actually reached at the Working Group and COREPER levels, making these the central *de facto* decision-making institutions of the European Union (Lewis 1998).

The bargaining process is not a purely linear one. A particular bargain may move freely back and forth for consideration and discussion among the three levels, with final agreement taken by the Council of Ministers. The strategies used by the different member state

40 The various Council formations include: (1) General Affairs and External Relations, (2) Economic and Financial Affairs (EcoFin), (3) Cooperation in the fields of Justice and Home Affairs (JHA), (4) Employment, Social Policy, Health and Consumer Affairs, (5) Competitiveness, (6), Transport, Telecommunications and Energy, (7) Agriculture and Fisheries, (8) Environment, and (9) Education, Youth and Culture (Council 2007).

representatives at these different levels are highly coordinated and unified within the member states' Permanent Representations so that a single, unified line largely defines each member state's overall strategic approach in any given bargain.

It is this bargaining setting, within the everyday EU decision-making institutions that I will use to test the institutional argument posited by this study. In doing so, I will first apply the abstract theory to the EU bargaining setting and derive a testable hypothesis and observable implications vis-à-vis the EU. I will then empirically test these, drawing on several different bargains that took place within the Council of Ministers structure.

4.6 DERIVING A TESTABLE HYPOTHESIS: DIRECT TEST OF THEORY

Each proposal presented by the Commission and/or Presidency creates an institutional structure for a bargaining game that is then played among the member state representatives in the Council of Ministers institutions.⁴¹ The particular issues that are included or not included in the proposals define the issue linkage structure of the game (as laid out by the abstract model). Whether or not this issue structure is characterized by issues with offsetting distributional patterns impacts member states' incentives to truthfully reveal or strategically misrepresent their

⁴¹ Each new proposal lays out a new set of issues (i.e., creates a new issue linkage structure). Following Lake and Powell (1999), it therefore creates a new bargaining game which the member state representatives then play, and will be treated as such in the empirical analysis. However, when the Presidency presents a proposal which modifies the original proposal of the Commission over which member state representatives have been bargaining, treating this solely as a new bargaining game can lose an important potential mitigating factors such as path dependence (Pierson 1996) and the potential endogeneity of the proposals' structure to the previous interactions among the member states. Therefore, the previous character of interaction among the EU member states on these types of proposals will be an important control variable to consider in the analyses. In other words, including the lag of the dependent variable in these panel situations will be an important consideration in the empirical analysis.

interests. This, in turn, will lead member states to adopt either cooperative or non-cooperative bargaining strategies.

The test undertaken here is designed to examine whether these expectations hold in real-world cases of EU bargaining. If the theory presented here does in fact explain EU bargaining, holding all else constant, when the Commission or Presidency presents a proposal with issues which have offsetting distributional patterns for the member states, member state representatives adoption of more cooperative bargaining strategies should be empirically observed. Conversely, if the issues included in a proposal do not possess offsetting distributional patterns, more competitive (i.e., less cooperative) bargaining strategies should be observed. This leads to the following testable hypothesis which drives this study:

Hypothesis: Holding all else constant, as the distributional patterns of the issues laid out in a legislative proposal (presented by the Commission or Presidency) become more offsetting, the bargaining strategies adopted by the EU member states will become increasingly cooperative in character.

4.7 DERIVING OBSERVABLE IMPLICATIONS: INDIRECT TEST OF THEORY

In order to further empirically evaluate this theoretical argument, three main observable implications of the theory at work in EU decision-making can be evaluated by analyzing specific cases of EU bargaining. The first provides additional support to back up the relationship between the issue structure and bargaining strategy, as laid out in the central hypothesis. The second and third observable implications are designed to lay out the requirements that would be necessary in order to empirically demonstrate the logic and causal mechanisms which are argued

to underlie the hypothesized relationship at work.

Observable Implication 1: Different EU member states, with different characteristics should react in a similar way to the issue linkage structure of the proposal over which they are bargaining.

This observable implication can be evaluated by examining and comparing the strategies adopted by different types of member states on proposals with different issue linkage structures. If different member states with different *ex ante* predispositions toward particular types of bargaining strategies act in a similar way, this will provide further support for the central argument posited by this study. In other words, evidence that different states all adopt more cooperative types of bargaining strategies when the issue linkage structure set by a proposal is offsetting, and conversely, all adopt more competitive types of bargaining strategies when the issue linkage structure set by a proposal is not offsetting will provide additional empirical support for the argument presented here.

In the EU case, this predisposition can stem from the degree to which a member state is more Euroskeptic or more European-oriented in their general approach, the size and power of the member state, and the particular culture from which it approaches politics. In particular, the United Kingdom, widely considered a “Euroskeptic” country (e.g., Kassim, Menon et al. 2001) may be less likely to adopt cooperative, more “European” types of strategies. Smaller member states, with less bargaining power may be more likely to adopt such cooperative types of strategies, as they are less able to effectively wield competitive bargaining strategies centered on the exploitation of bargaining power, to fulfill their interests (e.g., Krasner 1991; Moravcsik 1998). Furthermore, countries with political traditions based on cooperation and accommodation among groups (Lijphart 1968) or between workers, industry and the state (Compston 2003) may

have a predisposition toward more cooperative types of interactions. The same may also be true for countries that have social capital built on trust and reciprocity, such as the Scandinavian countries (Wiarda 1996; Rothstein and Stolle 2003).

The theory presented here argues that all of these states' bargaining strategies should be more cooperative when the issues over which they are bargaining are more offsetting, and less cooperative when the issues are less offsetting, despite their *ex ante* predisposition.

Furthermore, the theory predicts that cooperative bargaining strategies will be adopted in offsetting issue linkage structures because it is in the rational, utility-maximizing interest of the member states to do so. As distributional implications of the linked issues become more offsetting, the utility derived from cooperative bargaining for all member states should increase; as these distributional implications become *less* offsetting, the utility derived from cooperative bargaining for all member states should decrease.⁴² However, the actual utility a member state receives by adopting different strategies is not empirically observable. This causal mechanism, then, can only be indirectly evaluated. In particular, indirect evidence of these changes in payoffs would be the perception on the part of member state representatives that engaging in cooperative or competitive strategies (depending on the issue structure) is in the best interest of their member state. This leads to the following indirect implication of this abstract theoretical argument.

Observable Implication 2: As the distributional patterns of the issues included in a legislative proposal (presented by the Commission or Presidency) become more offsetting, member state representatives should perceive the adoption of cooperative bargaining strategies to be interest-maximizing for their member

⁴² The theory-building model in Chapter 3 demonstrates that this is true even when the utility function assigns utility based on relative, rather than absolute, gains.

state; as they become less offsetting, member state representatives should perceive the adoption of non-cooperative bargaining strategies to be interest-maximizing for their member state.

This implication allows for an indirect evaluation of one of the central causal mechanisms highlighted by the abstract model in Chapter 3. However, it can also only be indirectly evaluated. In particular, the *perceptions* of the member state representatives themselves cannot be directly measured. However, via in-depth interview evidence, evidence of these perceptions and how they impacted member state representatives' choices and strategies can be used to demonstrate that this causal logic is at work. While this is not an ideal test, it is an important way to attempt to empirically evaluate the interest-based causal logic highlighted by the theory presented here.

Furthermore, evidence of this interest-based logic at work is important, and should be evaluated against the alternative explanation that it is a *norm* within the EU to engage in cooperative interactions. If a normative, rather than interest-based logic is driving the actions of member states and their representatives, the logic underlying this theoretical argument and hypothesized relationship between offsetting issue linkage structures and cooperative bargaining is greatly weakened.

Finally, a central aspect of the causal mechanisms laid out in the theory-building model in Chapter 3 is states' truthful revelation or strategic misrepresentation of their interests. These different mechanisms then lead to different types of bargaining strategies being adopted. In particular, without the truthful revelation of interests, cooperative bargaining is impeded. Evidence of the truthful revelation (or the lack of strategic misrepresentation) of interests is therefore an important observable implication of the causal logic argued to underpin the

theoretical argument at work in these cases. This leads to a final observable implication whose empirical support can point to the logic of the abstract model above at work in EU bargaining.

Observable Implication 3: As the distributional patterns of the issues set by a legislative proposal (presented by the Commission or Presidency) become more offsetting, member state representatives should be observed engaging in “truthful revelation” rather than “strategic misrepresentation” of their member state’s interests.

4.7.1 Conclusion of Theoretical Expectations

Taken together, the hypothesis and observable implications laid out above provide a connection between the abstract model and argument in Chapter 3 and real-world bargaining that takes place in the European Union. In addition, using the case of the EU allows for different mitigating factors to be taken into account when applying an abstract, game theoretic model to empirical cases. Evaluating this argument in the case of the European Union will not only allow for a better understanding of EU decision-making, and how cooperative bargaining can be fostered in a given bargaining proposal through the linkage of different types of issues, but also allows for a test of the argument, and one that is characterized by a high degree of internal validity.

4.8 ALTERNATIVE EXPLANATIONS

While I argue that an issue linkage structure with offsetting distributional patterns leads to cooperative bargaining, there are several other possible explanations for the variation in the

character of bargaining interactions. These alternative explanations need to be carefully evaluated and controlled for in the empirical analysis in order to construct a test in which a high degree of confidence can be held in the resulting findings. Four categories of alternative explanations exist – characteristics of the institutional structure within which a bargaining interaction takes place, characteristics of the states themselves which may drive their choice of bargaining strategies, characteristics of the bargain which may impact state strategies, and particular approaches to bargaining that each individual negotiator may have.

4.8.1 Structural Characteristics: Institutional Socialization

Bargaining that takes place within a social context dominated by trust and norms of cooperation may lead to the adoption of cooperative bargaining. As has been argued, socialization in international institutions can lead to internalization of the norms of the social environment and this may shape states' behavior within the institution (Lewis 1998; Lewis 2000; Christiansen, Jorgensen et al. 2001; Johnston 2001; Lewis 2003; Checkel 2005; Lewis 2005). In the case of the Committee of Permanent Representatives (COREPER) in the European Union (the case examined here), Lewis argues that five norms of behavior govern the actions of member state representatives within the institution – norms of consensus, diffuse reciprocity, compromise, mutual responsiveness, and thick trust (Lewis 1998; Lewis 2000; Lewis 2003; Lewis 2005). He argues that because representatives are socialized to think of these norms as the 'appropriate' way to interact within this institution, these norms regulate their behavior. Based on this argument, it is the socialization of member state representatives to these norms that drives the bargaining within COREPER and may lead to the adoption of more cooperative bargaining strategies (Lewis 2005).

While focusing solely on utility maximization, the argument posited in this dissertation predicts behavior consistent with this norm-based argument when the distributional patterns of the issues over which the member states bargain are offsetting. Because of these similar predictions, this alternative explanation is carefully considered and discussed in each case study, and the relative weight of both the norm- and interest-based arguments is evaluated.

4.8.2 State Characteristics: Political Culture

The potential influence of a state's political culture on the types of bargaining strategies they adopt should be considered. Political culture has been shown to be an important factor in explaining the types of behavior adopted within the political life of a state (Pye and Verba 1965; Benedicto 2004). It may therefore be the case that the political culture of some member states may be more cooperatively oriented, while others may be more individualistic and competitive. In particular, states with political traditions based on cooperation and accommodation among different social groups (Lijphart 1968) or between workers, industry and the state,⁴³ or countries such as the Scandinavians which have social capital built on trust and reciprocity (Wiarda 1996; Rothstein and Stolle 2003) may have a predisposition toward more cooperative types of interactions. This difference in culture, rather than variation in the structure of issue linkage may therefore explain the variation in the type of bargaining interactions that arise within the EU. Thus, the political culture of each state is an important factor that needs to be controlled for to avoid omitted variable bias in the empirical test which follows.

⁴³ For evidence that this degree of cooperation varies across the countries of Europe, see (Compston 2003).

4.8.3 State Characteristics: Power

Variation in the power of the states involved in a bargaining process may lead to the adoption of different types of bargaining strategies. Power is a factor often cited as a key factor driving the behavior and strategic interactions of states (e.g., Waltz 1979; Krasner 1991; Michalak 2001). This is true even in analyses of interactions in the EU (e.g., Moravcsik 1998). In particular, in bargaining settings, power (i.e., relative bargaining power)⁴⁴ is something that can be exploited by states in order to extract concessions from other states. More powerful states are therefore more likely than less powerful states to adopt bargaining strategies characterized by these power-oriented tactics (Dür and González 2007) – tactics that directly correspond to non-cooperative bargaining strategies, as it is defined here.

4.8.4 Characteristics of Bargain: Politicization

The level of politicization surrounding a particular bargain may influence the cooperative nature of the bargaining strategies adopted. On issues that are highly politicized and more subject to public scrutiny, negotiators may be unwilling to compromise on the narrow self-interest they represent, even on issues of little relative importance to their state's overall interests, while in bargains that are not highly politicized, they may be more willing to offer concessions. This may be due to the level of publicity and public scrutiny attached to more politicized issues (Elgström and Jönsson 2000; Stasavage 2004) and repercussions that may arise if the government is seen as giving on these types of issues. In addition, politicization may also bring strong partisan

⁴⁴ This is often conceptualized in terms of a state's size and resources in the international relations literature which examines the importance of power in decision-making processes (e.g., Moravcsik 1998).

preferences into the decision-making process, which may also lead to less willingness to compromise on these issues.

4.8.5 Characteristics of Bargain: Decision-Rule

The type of voting rule used to take a decision may also govern the type of strategies chosen by negotiators. Where unanimity is the voting rule, each negotiator possesses the ability to veto an agreement. However, in a majority voting decision, the possibility exists that a coalition can out-vote a given state. This possibility may make negotiators more willing to offer concessions in order to avoid a situation in which they have no say in the outcome (e.g., Scharpf 1988; Elgström and Jönsson 2000; Michalak 2001).

In addition, a unanimity decision-making setting may be viewed by negotiators as giving them more ‘leverage’ for competitive tactics (Krasner 1991), and may therefore lead to the adoption of more competitive strategies within the decision-making process. Under a majority voting rule, where not all negotiators must agree for a decision to be taken, the veto cannot be used to the same degree to influence an outcome. Competitive strategies may therefore be less likely because the leverage of the veto is absent. The voting rule, another potential explanation for the adoption of cooperative or non-cooperative bargaining strategies therefore needs to be controlled for to have confidence in any results which attribute explanatory power to the issue structure.

4.8.6 Characteristics of Bargain: Issue Area

Different types of issue areas may foster different types of bargaining strategies. Issue areas more politically sensitive or more oriented toward ‘high’ politics may lead to different, and more competitively-oriented types of bargaining strategies because states, in a self-help situation, are more egoistic and individually oriented in such situations (Waltz 1979). Conversely, more ‘technocratic’ or economic issue areas may be more likely to foster cooperation because they are not as directly tied to state survival (Waltz 1979; Lipson 1984; Krasner 1991). That this is expected even within the context of the EU can be seen in arguments that the EU competence is expected to expand and create ‘spill-over’ effects in the more technocratic issue areas, but not necessarily the more ‘high politics’ issues (Haas 1958; Stone Sweet and Sandholtz 1997).

4.8.7 Individuals’ Bargaining Approach

Several studies have analyzed the impact of the approach of each individual negotiator on the type of bargaining strategy she adopts. Background and training, as well as individual cognitive and psychological factors, can have an impact on the bargaining strategy and willingness to compromise that each member state representative exhibits (Druckman 1994; Druckman 1995; Druckman and Mitchell 1995). It is important, then, to consider the impact that individual negotiators may have on the bargaining strategies adopted and attributed to states.

These potential alternative explanations need to be evaluated and controlled for in order to conduct a test of the argument made here.

4.9 OVERVIEW OF RESEARCH DESIGN

The major difficulty in testing the argument posited in this dissertation was that a dataset of international bargaining and the bargaining strategies that states adopt did not exist, much less one which included measures for the central variables in this study. I therefore selected a sample of cases and coded these bargains to construct an original dataset on which to test the argument. The cases were chosen to control for and assess the relative explanatory power of the potential alternative explanations compared to the dissertation's theoretical argument. The selected cases were chosen to generate variation on these variables of interest.

First, the sample consists of cases of bargaining within the EU. This allows for an analysis of bargaining where the issue structure is relatively exogenous to the bargaining interaction, thus allowing for a test that reduces endogeneity concerns – concerns that, in general, lessen the confidence that can be held in empirical results that support causal arguments. In addition, examining bargaining in the EU allows for a feasible data-collection effort. Most importantly, examining bargaining within the EU also allows for the EU institutional and social structure and many additional factors that are not directly relevant to state bargaining strategies to be held constant across the cases examined. These factors at the level of the EU institutional structure which remain constant across the cases while the states' bargaining strategies (the dependent variable) vary can be eliminated as potential explanations for the variation in member state bargaining strategies (Przeworski and Teune 1970: 34). Thus, case selection was used to approximate an experimental research design – allowing many potential mitigating factors to be held constant, while the variables of interest vary.

The particular cases of bargaining were chosen to obtain variation on the alternative explanations of interest related to the characteristics of bargains. Cases of bargaining with

different levels of politicization, that took place in different issue areas, and that were subject to different decision-rules were chosen. In total, five bargaining interactions are analyzed, and present variation on these alternative explanations related to characteristics of the bargain. First, the Battery Directive is a low politics, qualified majority, and un-politicized negotiation. It exemplifies the more “everyday” EU negotiations that characterize the majority of EU legislation. In addition, two bargaining interactions that took place over the Services Directive are examined. These cases exemplify bargains in low politics that were subject to a qualified majority decision rule, but were also highly politicized. These three bargaining cases all took place in COREPER I within a relatively close time period, and were therefore conducted by largely the same individual negotiators.

Finally, two phases of the Framework Decision Combating Racism and Xenophobia are analyzed. These negotiations are politicized negotiations subject to a unanimity decision-making rule. These two cases took place in COREPER II and within a relatively close time period, and were therefore conducted by largely the same individual negotiators.

In each case, the bargaining strategy adopted by each member state is examined. This allows for controls for the various characteristics of the member states – their power and various characteristics of their political culture – to be included in the analysis. In a large-N test, controls for these state and bargaining characteristics are included and their impact on state bargaining strategies is statistically evaluated. Within each case study, the normative versus interest-based logic can be empirically assessed, allowing for a more direct evaluation of the impact of the socialization argument versus the theoretical argument presented here.

4.10 OVERVIEW OF EMPIRICAL ANALYSIS

Based on this research design, the empirical analysis of the theoretical argument will proceed in two parts – a large-N statistical analysis and several in-depth case studies. The large-N analysis can carefully control for the alternative explanations while evaluating the hypothesized correlation between the issue linkage structure of a bargain and the bargaining strategies states adopt. The case studies are designed to provide an analysis of the causal mechanisms argued to underlie the hypothesized relationship, as well as to demonstrate several important factors which the large-N analysis alone cannot encompass. The remainder of this project is dedicated to carrying out this two-part empirical analysis.

4.10.1 Overview of Statistical Analysis

Chapter 6 presents a large-N statistical analysis of EU decision-making. This test is designed to analyze the central hypothesis posited in this study, analyzing the correlation between the distributional patterns of the issue linkage structure of a proposal and the bargaining strategies adopted by various member states. To do so, for each bargaining interaction described above, the cooperative nature of each member states' overall bargaining strategy and the distributional patterns of the issues laid out in the Commission (or Presidency) proposal were coded following carefully constructed coding rules.

Chapters 5 and 6 lay out these coding rules for the main independent and dependent variables. Then, drawing on the alternative explanations described above, Chapter 6 specifies important control variables to include in the analysis. I then carry out a statistical analysis examining the bargaining strategy adopted by each member state in each bargaining case.

Chapter 6 reports the statistical findings and interprets these results substantively. In particular, it shows that even when controlling for these alternative explanations, the more offsetting is an issue linkage structure, the more cooperative are the bargaining strategies member states adopt.

4.10.2 Overview of Case Studies

The statistical analysis in Chapter 6 can only evaluate the co-variation of the degree to which an issue linkage structure is offsetting and the bargaining strategies adopted by the member states. It cannot directly assess any *causality* in the relationship between these two factors. In-depth case studies are therefore presented in Chapters 7 through 9 to trace the causal process and highlight the observable implications of the theory at work in the European Union. Chapter 7 analyzes negotiations over un-politicized, largely “everyday,” and technocratic legislation – the Battery Directive. In contrast, Chapter 8 analyzes two phases of negotiation on the highly politicized Services Directive in the field of economic and competition policy. Finally, Chapter 9 analyzes two phases of negotiation over the Framework Decision on Combating Racism and Xenophobia – a dossier that touched upon constitutional issues for many of the member states and was thus characterized by highly politicized and sensitive negotiations.

These case studies are used to address several theoretical and empirical issues which cannot be addressed in the statistical analysis itself. First, and most importantly, they are used to highlight the causal mechanisms argued to underpin the hypothesized relationship between the issue linkage structure and state bargaining strategies at work. In doing so, the observable implications of the theory at work are evaluated in each case. Second, they describe the background and details of the cases, thereby explaining and supporting the coding used in the large-N dataset. In addition, they are used to highlight and discuss the relative exogeneity of the

issue structure in each of the bargaining cases, as well as to demonstrate the constancy of the bargaining space across each bargaining interaction – a factor important for the coding of the main independent variable.

Using the combination of the large-N analysis and case studies, the empirical analyses provide important and rigorously-evaluated real-world evidence of the theory described above at work in the EU. The conclusion will summarize this evidence and lay out paths for future work in line with this research agenda.

5.0 OFFSETTING DISTRIBUTIONAL PATTERNS

The preceding chapters presented the argument that the more offsetting are the distributional patterns of the issues which structure a bargaining interaction, the more likely states are to adopt cooperative bargaining strategies. Before an empirical test of this argument can be carried out, rules for the empirical observation and measurement of the degree to which the distributional patterns of issues are offsetting need to be carefully specified. In the theoretical, formal literature that analyzes issue linkage, rules do not exist for empirically identifying and measuring offsetting distributional patterns (ODPs) across different bargaining settings with different types and numbers of issues and actors. An important empirical contribution of this dissertation is therefore the specification of generalizable measurement rules for these two concepts: offsetting distributional patterns (ODPs) and cooperative bargaining. After laying out these measurement rules, they are applied to several cases of bargaining in the European Union (EU), providing a dataset on which the argument can be tested.

5.1 MEASURING OFFSETTING DISTRIBUTIONAL PATTERNS: OVERVIEW

The main explanatory variable in this study builds on the issue linkage literature to capture an important theoretical component of different issue structures – the degree to which the issues linked in a bargain have offsetting distributional patterns. The more evenly the costs and

benefits of bargaining across a set of issues are distributed among the bargaining states, the more “offsetting” are the “distributional patterns” of the issues which structure this bargain. While the issue linkage literature has discussed this particular concept in a theoretical, formal way (e.g., Tollison and Willett 1979), rules for its empirical measurement in different bargains with different types and numbers of issues and actors have not before been provided.

This project specifies such rules, allowing an empirical test of the theoretical argument presented here to be carried out. In addition, the measurement rules presented here can be used in future research to empirically test other theoretical arguments in the issue linkage literature. Important steps are therefore taken here not only in theorizing about the impact of issue linkage on bargaining strategies, but in connecting theoretical issue linkage work to empirically-grounded political science research.

To measure offsetting distributional patterns, the following steps are taken. In Part 1, I discuss the concept of *bargaining space*, referring to the range of agreements that all bargaining actors are willing to accept. This concept is central to understanding offsetting distributional patterns in the issue linkage literature. However, in a multi-issue bargain, the bargaining space is multi-dimensional and therefore very difficult to measure. For example, in a six-issue bargain, this bargaining space is six-dimensional, indicating the values on all issues on which all actors can agree. In order to simplify this, I break down the bargaining space into a single dimension which can then be analyzed for each issue in the bargain.

I introduce the concept of *give* to capture the distance between an actor’s ideal outcome and bottom line on a given issue. I then demonstrate that an actor’s give on one issue depends on the other issues linked to it, and introduce the concept of *linked give* to refer to an actor’s give on an issue, *given* the other issues to which it is linked in the bargain.

In Part 2, I use these concepts to calculate the degree to which the range of agreements acceptable to both actors in a pair overlap on a given issue, measuring the size of the bargaining space for that pair of actors on a particular issue. I calculate this range of overlap for all pairs of actors on all issues. In Part 3, I draw on these measures of overlap for each pair of actors on each issue to construct an indicator for the overall bargaining space. This measure calculates the “average bargaining space” across all issues and all pairs of actors, and thus gives an empirical approximation of the size of the multi-dimensional bargaining space in the overall bargain. In Part 4, I discuss the rules for coding and aggregating the different components of the measure in real bargaining cases.

Finally, in Part 5, recognizing that the concept of offsetting distributional patterns may refer either to the *size* of the bargaining space, or simply to the *existence* of this bargaining space, I use these calculations to construct two types of measures. The first measure uses this average as a representation of the degree to which the distributional patterns of the issues in the bargain are offsetting. The larger is this measure, the larger is the bargaining space, on average, and therefore the more offsetting are the distributional patterns of the given set of issues. The second measure dichotomizes this first measure, creating a dummy variable which indicates whether or not (on average) a bargaining space exists. By specifying this method for the construction of these measures, this project presents generalizable rules for the empirical analysis of issue linkage and the offsetting distributional patterns of different sets of linked issues.

5.2 MEASURING ODP PART 1: BUILDING-BLOCK CONCEPTS

5.2.1 Bargaining Space

In conceptualizing issue structures with offsetting distributional patterns, the central feature of the analysis relates to how a given set of issues over which actors bargain impacts the range of potential agreements acceptable to each bargaining actor. The policy space in which all actors' range of acceptable agreements overlap is referred to in the bargaining literature as the zone of possible agreement (ZOPA) (e.g., Sebenius 1983) or the bargaining space (see Gilady and Russett 2002: 397). Both concepts refer to the policy space within which all actors would be willing to accept an agreement. In this project, I adopt the term *bargaining space* to refer to this overlap.

Previous literature has demonstrated that the linkage of issues can increase the bargaining space, but may also decrease or eliminate it. How the bargaining space changes depends on the “distributional patterns” of the linked issues – i.e., the distribution of the costs and benefits of bargaining across a set of issues. In particular, the more “offsetting” are the distributional patterns of a set of linked issues (i.e., the more evenly these costs and benefits are distributed across the bargaining actors), the greater the bargaining space will be (Sebenius 1983).

The empirically measurable feature of the degree to which linked issues have offsetting distributional patterns is therefore the size of the bargaining space. However, in a multi-issue, multi-actor bargain, this space is a multi-dimensional concept and therefore very difficult to measure. To empirically analyze the bargaining space, I break down this concept into its component parts, analyzing and measuring the bargaining space on each one-dimensional issue for each pair of actors.

5.2.2 “Give” and “Linked Give”

The concept of “give” is introduced here to refer to the distance between an actor’s ideal point and their bottom line (sometimes referred to as their red line) on a given issue. In other words, it refers to the distance (in one-dimensional policy space) from its ideal point within which an actor would be willing to accept an agreement, capturing the range of acceptable agreements to an actor on a given issue. More intuitively, it can be thought to represent how flexible an actor is on an issue – the larger an actor’s give on an issue, the more “flexible” that actor is willing to be on that issue.

Each bargaining actor has a natural degree of give (“*natural give*”) on an issue depending on how important that issue is to its interests (i.e., its salience). Rather than being a fixed value, this distance can increase or decrease depending on the other issues to which it is linked in a bargain.⁴⁵ This can occur either because an issue is linked which influences an actor’s payoffs on the other issue, or because the issues differ in relative importance to an actor, even if they are not directly related. I refer to the distance within the policy space from an actor’s ideal point to their bottom line *given* the other issues included in a bargain as an actor’s “*linked give*.”

Given this conceptualization, an actor’s linked give on an issue captures two factors: (1) the importance (salience) of an issue to an actor’s interests and (2) that issue’s importance to that actor *relative* to the other issues included in the bargain. In a single-issue negotiation, the linked give of an actor is equal to its natural give on the issue, as the issue’s relative weight is not a factor. The linkage of another issue (or issues) may increase that actor’s range of acceptable agreements on the original issue, but may also decrease it or not impact it at all.

⁴⁵ This is implicit in discussions of the impact of issue linkage on the bargaining space (Sebenius 1983).

Consider two linked issues. Because they are linked (and thus “simultaneously considered for joint settlement” (Sebenius 1983: 287)), rather than weighing an agreement on each issue to their status quo position on each issue, an actor compares any possible agreement including *both* issues to their status quo position. Gaining more on a more important issue can therefore “offset” gaining less (or even losing some) on an issue of lesser importance because the payoff from the more important issue is larger than the cost on the less important issue.

Given this, if both issues are relatively equal in importance to an actor, her give on each issue does not change based on this linkage (i.e., her linked give is relatively equal to her natural give). Similarly, if issue A is important to an actor but she is completely indifferent on issue B (i.e., she has no preference at all regarding the outcome on that issue), the linkage of the completely irrelevant issue B does not impact her linked give on issue A.⁴⁶ This is because if an actor has no position on an issue, there is nothing to give on that issue in order to gain on the more important issue.

However, if issue A is central to an actors’ interests while issue B is of lesser importance (though not irrelevant), her give on the more important issue will likely decrease, while her give on the more important issue will likely increase. The possibility of gaining more on the more important issue makes her more willing to give on the issue of lesser importance. Thus her linked give on the more important issue (issue A) is less than her natural give, while her linked give on the less important issue (issue B) is greater than her natural give on that issue. Similarly, if two issues that are substantively related are linked together, their linkage may alter the linked give on the issues.

⁴⁶ It should be noted that the linked give is an *objective* measure of actors’ *interests*. Despite the irrelevance of issue B, a bargaining actor may try to *misrepresent* her interests on that issue in order to gain more in the bargain on issue A. This does *not*, however, mean that her actual give on the issue changed. Instead, this misrepresentation is a component of an actor’s bargaining strategy, and is analyzed here as such.

Therefore, in a multi-issue bargain, an actor's linked give on an issue may be greater than, less than, or equal to its natural give, depending on what other issues are included in the bargain. Because this is a central concept in the analysis here, the next section lays out an illustrative example of how an actor's give on an issue can change based on the issues to which it is linked.

5.2.3 Linked Give – An Illustrative Example

Drawing on the negotiations on the Framework Decision on Racism and Xenophobia among the EU member states, Figure 5.1 and Figure 5.2 lay out an example of how issue linkage can expand or contract actors' linked give (and thus expand or contract the bargaining space on this issue). When the states of the European Union were bargaining over criminalizing racist and xenophobic behavior, the definition of what would be considered a criminal act was a key issue. Several member states, particularly those who had already criminalized acts such as the denial of the Holocaust, wanted a broad definition (this position is labeled A in Figure 5.1 and Figure 5.2). Others, though, were concerned about placing limitations on freedom of expression, and did not want a broad definition of what would be considered a criminal act (this position is labeled B in Figure 5.1 and Figure 5.2). Thus, these two groups of states preferred outcomes were quite far apart within the one-dimensional policy space – where the “policy space” in this case refers to the breadth of the definition of criminalization.⁴⁷

For reasons which will be dealt with in the discussion of this case in Chapter 8, both groups of states considered this issue very important to their own state interests, and were

⁴⁷ For ease of explanation, each group of states is treated as a single actor in this analysis. Coalitions and how to deal with them in this measurement process will be dealt with later in this measurement discussion.

therefore quite firm in their positions on this issue. Neither side was willing to accept an agreement which diverged very far from their own preferred criminalization definition. Thus, in the terms being adopted here, the *natural give* on this issue was very small around the most preferred outcome for both groups of states.

Figure 5.1 graphically illustrates the *natural give* of the two types of actors on this issue. For the states that did not want a broad definition, B , their bottom line refers to the broadest a criminalization definition could be and still be acceptable to them. This bottom line is represented by the bracket curved towards B . The natural give of this group, labeled B_L , refers to the distance between their ideal point (B) and bottom line. For the states that wanted a broad definition, A , their bottom line refers to the least broad a criminalization definition could be and still be acceptable to them. This bottom line is represented by the bracket curved towards A . The natural give of this group, labeled A_L , refers to the distance between their ideal point (A) and bottom line.



Figure 5.1. Criminalization Definition Issue Space (Wide to Narrow Definition), No Linkage

The inclusion of a second issue in the bargain – exemptions to the criminalization definition – created a new linked give for the criminalization issue. Because states in group B could now negotiate exemptions which could limit their adoption of a broader definition (if it was defined as such in the agreement reached), attaining a narrow definition of criminalization

was no longer as central to protecting their freedom of expression concerns. They therefore could accept a broader criminalization definition than they could absent this exemption issue, and their bottom line moved closer to the opposing group's ideal point. Therefore, when these two issues were linked together in the bargain, the linked give of states with the ideal point, B was greater than their give when negotiating on this issue alone (i.e., their natural give on the issue). The inclusion of this exemption issue did not, though, impact the importance of achieving a broad definition to the states in group A. The linked give of group B was greater on this dimension of the multi-issue space given this linked issue structure, but the linked give of group A was the same. Figure 5.2 graphically illustrates this new bargaining situation on the criminalization definition.

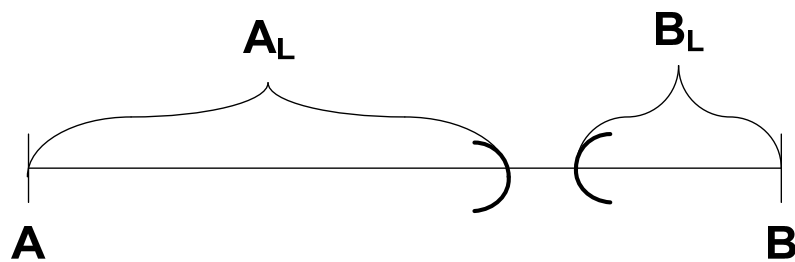


Figure 5.2. Criminalization Definition Issue Space, Linkage to Exemption Issue

This example and these figures help to illustrate the logic which underlies the concept of linked give and how the linkage of one issue can alter an actor's bottom line – and thus the distance within which they would be willing to accept an agreement – on another issue. It is important to note here that the linked give measure for each actor on each issue is coded based on the importance of each issue within the issue structure of the bargain as a whole (not necessary in terms of the trade-offs between each pair of issues for each pair of actors).

Therefore, in the actual case, when coding the value of the linked give of each actor on the criminalization definition, the other issues in addition to the exemption issue that were included in the bargain are taken into account (rather than just the exemption issue, as used in this simple illustration). This idea of linked give can now be used to measure the degree to which the set of issues which structure a given bargain have offsetting distributional patterns.

5.3 MEASURING ODP PART 2: OVERLAP OF ACTORS' LINKED GIVE

Let N be the set of actors involved in a given bargaining game, Γ , and let M be the set of issues over which the actors bargain. M therefore refers to the set of issues which are linked together to “structure” bargaining in Γ . Given N , let Z be the set of all pairs of actors, ij , such that $i \in N$, $j \in N$, and $i \neq j$. For each pair (z) and issue (m), let D_{zm} represent the space of potential agreements on issue m that are acceptable to both actors i and j in the pair. D_{zm} thus refers to the bargaining space for any pair of actors (z) on issue m . This bargaining space can be captured mathematically by $D_{zm} = A_L + B_L - |A - B|$, where A represents actor i 's most preferred outcome on issue m , A_L represents actor i 's linked give on issue m , and B represents actor j 's most preferred outcome on issue m , and B_L represents actor j 's linked give on issue m . The degree to which these actors' linked gives overlap depends on the distance each is willing to give from their ideal point (A_L and B_L) and how far apart their ideal points are ($|A - B|$). By adding together the two actors' linked give, $A_L + B_L$, and subtracting away the distance between their ideal points, $|A - B|$, what is left is the degree of overlap of both actors' range of acceptable agreements: their bargaining space on this issue.

To better understand this calculation, consider Figure 5.3 and Figure 5.4 in terms of two actors. Actor i prefers point A and actor j prefers point B. Actor i has linked give indicated by the distance A_L and actor j has linked give indicated by the distance B_L . In Figure 5.3 the actors' linked gives overlap. The larger is this overlap, the greater is the range of potential agreements acceptable to both actors on this issue (i.e., the greater the bargaining space). In Figure 5.4, the actors' linked gives do not overlap. The space between their bottom lines indicates how close (or how far away) they are from overlapping. The larger this distance, the more the actors' gives would need to increase to make agreement possible.

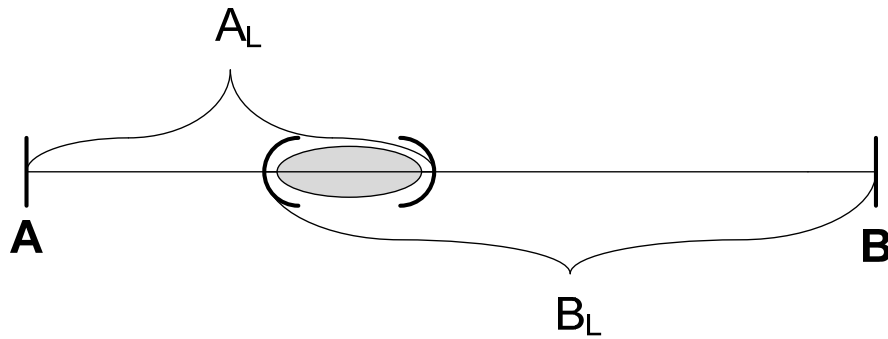


Figure 5.3. Bargaining Space Calculation with Overlap

If there is overlap and thus a policy space in which they are both willing to agree, as in Figure 5.3, the sum of their linked gives, $A_L + B_L$, will be greater than the distance between their ideal points, $|A - B|$. The calculation of D_{zm} for this pair of actors on this issue will therefore be a positive value, indicating the distance in the issue space within which an agreement is possible among these two actors. This distance is highlighted by the grey oval in Figure 5.3. For this pair on this issue, the calculation of D_{zm} will capture this distance, and assign it a positive value, indicating a bargaining space exists.

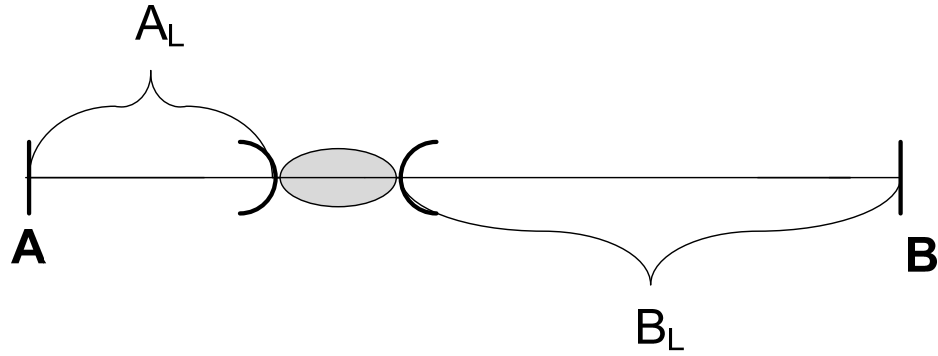


Figure 5.4. Bargaining Space Calculation without Overlap

If there is no overlap, as in Figure 5.4, the sum of the actors' linked gives, $A_L + B_L$, will be less than the distance between their ideal points, $|A - B|$. The calculation of D_{zm} for this pair on this issue will therefore be negative, indicating the policy distance separating the actors' bottom lines – i.e., how far apart they are from being able to reach an agreement on this issue. This distance of non-overlap is highlighted by the grey oval in Figure 5.4. For this pair on this issue, the calculation of D_{zm} will capture this distance, and assign it a negative value, indicating overlap does not exist.

5.3.1 Coding Coalitions and Indifference

In addition to this standard calculation of the bargaining space for a pair of actors on a given issue, two complicating factors need to be taken into account in the construction of this measure of overlap, D_{zm} . These two factors impact the possibility an issue (m) can be involved in any given trade-off between a given pair of actors. First, in bargains which include more than two actors, coalitions often exist. In particular, actors who have similar (or identical) interests are not

able to trade with each other on that issue in order to gain on another. Therefore, issues on which a pair of actors share the same interests will not apply towards that pair's ability to engage in trade-offs in the overall bargain. These issues for these pairs of actors cannot be included in the measure of the offsetting distributional patterns. Therefore, rather than the standard D_{zm} calculation described above, a pair that shares the same ideal point on a given issue is simply assigned a D_{zm} value of zero on that issue (i.e., $D_{zm} = 0$ for that pair, z , on that issue, m).

Similarly, an issue may have no importance to a particular actor's interests – i.e., the actor is completely indifferent as to the outcome on the issue. This situation refers solely to an actor not taking any position on a given issue, *not* the situation in which an actor takes a position but is actually willing to accept any agreement in the issue space. The latter is coded as the greatest degree of linked give. The former, though, represents a situation in which the issue cannot be used as a trade-off for that actor because they have taken no position from which they can give to the other actor. When actor i does not take a position on a given issue, that issue will not be included in the calculations for any pairs which include actor i . Therefore, rather than the standard D_{zm} calculation described above, any pair which includes actor i will be assigned a value of zero on that particular issue (i.e., $D_{zm} = 0$ for all pairs which include actor i on issue m).

Taking into account the standard calculation and these two special cases, D_{zm} (the degree of overlap for each pair of actors on each issue in a bargain) provides the basis for empirically analyzing the size of the overall bargaining space, and thus the degree to which a set of issues linked in a bargain possess offsetting distributional patterns.

5.4 MEASURING ODP PART 3: AGGREGATING OVERLAP COMPONENTS

Part 2 described how to measure the bargaining space for each pair of actors on each issue in a bargain (D_{zm}). Given these multiple components, a measure which empirically approximates the bargaining space in the bargain as a whole (i.e., across all pairs on all issues) can be calculated.⁴⁸

To construct this measure, the pair-issue values (D_{zm}) are added together and weighted by the number of pairs on all issues ($\#z*\#m$). Let D represent this measure for the overall bargain,

where $D = \frac{\sum_{z,m} D_{zm}}{\#z*\#m}$. This measure represents the average degree of overlap brought about by

the given issue linkage structure (i.e., the average size of the bargaining space).

When D takes on positive values, a bargaining space among all actors in the multi-dimensional policy space exists, on average. The larger is the value of D , the greater is the overall bargaining space. When D takes on negative values, a bargaining space among all actors in the multi-dimensional policy space does not exist, on average. The more negative is the value of D , the farther apart are the actors' bottom lines, and thus the greater their linked give would need to be in order to create a bargaining space.

5.4.1 Multilateral Bargaining

Part of the benefit in approaching the measurement of offsetting distributional patterns in this way is that it does not necessitate a bilateral bargaining situation. It merely takes any bargaining

⁴⁸ In an analogous way to the description here, these pair-issue values can be combined in order to construct a measure for each actor in the bargain, rather than for the bargain overall. This would be useful for a researcher interested in the degree to which a given actor's interests are offset, given the issue linkage structure and other actors' interests.

situation – bilateral or multilateral – and breaks it down into all component pairs in the construction of the measure. Each state is paired with every other state for consideration.⁴⁹ In a bilateral situation, there will be one pair; in a bargaining situation with three actors, there will be three component pairs; in a bargaining situation with four actors, there will be six component pairs, and so on. In the bargaining in the EU with twenty-five or twenty-seven member states, there are 300 and 351 component pairs, respectively.

When the average degree of overlap for the bargain is calculated, the number of pairs is part of the weighting of the result, as is the number of issues. This allows for a measure which is comparable across different types of bargaining situations – both bilateral and multilateral, and with different numbers of linked issues.

5.5 MEASURING ODP PART 4: EMPIRICAL CODING RULES

Ideally, in carrying out this measurement in empirical bargaining cases, the policy space for each issue could be normalized to the interval $[0,1]$ and each actor's ideal point and precise bottom lines could be plotted on this continuous policy space, allowing for a precise calculation of D for any given bargain. This may be achievable for issues which involve “bargaining over numbers,” where a particular numerical value can be used to represent the ideal point and bottom line of an actor. Examples of this may include bargaining over the price of an object, the division of a

⁴⁹ This technique does not assume complete independence of the pairs, as the linked give components for each actor in a pair are dependent on the other issues in the bargain. It does, however, assume that the degree to which the bargaining space exists among a pair of actors is independent of the degree to which a bargaining space exists among another pair (i.e., the bargaining space between France and the Netherlands on one issue is independent of the bargaining space between France and Germany).

continuously divisible object⁵⁰, bargaining over a tariff rate, etc. However, in many empirical bargaining settings, issues do not involve a bargain over a continuously divisible object or over numerical values. In the example above of bargaining over the definition of a criminal act, if one state prefers to have a very narrow definition, but could accept a broader definition as long as it encompasses only behavior “which incites to violence or hatred,” is that a linked give value of 0.7 or 0.5 or 0.1?

Because of the difficulty in assigning precise values to bargains such as these, the measurement adopted here will be carried out using *categorical*, rather than continuous, assignments. There are two factors in the measurement of each D_{zm} that need to be categorized. The first is the distance between the ideal points of the two actors in the pair: $|A - B|$, referred as the *distance component*. The second is the linked give of each actor on the issue: A_L and B_L , referred to as the *linked give component*. For each of these components, a categorical label can be assigned. First, based on substantive knowledge of a given bargaining interaction, for each pair, the distance between each pair of actor’s ideal points can be coded as a “large” distance, “medium” distance, “small” distance, or “zero” (if they share the same ideal point). Similarly, drawing on substantive knowledge, each actor’s linked give can be coded as a “large” degree of give, a “medium” degree of give, or a “small” degree of give. Additionally, the actor’s linked give is coded “zero” if the actor is unwilling to accept any outcome other than its ideal point or “all” if the actor is willing to accept the ideal point of the other actor. These categories will be used to represent the distances A_L and B_L .

⁵⁰ The standard “divide the dollar” bargaining game is an example of this type of issue (e.g., Rubinstein 1982).

5.5.1 Empirical Evidence for Coding

For the bargains examined in this dissertation, all of which took place in the EU, in-depth interview evidence and documentation of the bargaining interactions were used to code these categories for all member states on all major issues in each bargain. To gather the evidence, 118 elite interviews were conducted from 2005 to 2007. The interviews were primarily conducted with member state representatives involved in the bargaining process in the Committee of Permanent Representatives (COREPER) and Working Group levels in the Council of Ministers – the individuals most involved in the bargaining processes under consideration (Hayes-Renshaw 2002; Lewis 2002; Hayes-Renshaw and Wallace 2006). Interviews also were conducted with Commission and Council General Secretariat participants in the bargains of interest to provide outside interpretations of the member state strategies and interactions.

In addition, working documents that catalog the positions and interests of the various member states were obtained.⁵¹ These documents were used to provide empirical information to substantiate evidence derived from the interviews, as well as to fill in gaps in the interview-generated data. Together, this in-depth interview and document analysis provided the substantive information necessary to carry out the coding of the component categories.

After coding the bargains using these categories, numerical values were assigned to each category. This allowed for a calculation of the bargaining space for each pair of countries on each issue. These measures were then averaged across all pairs and all issues (*D*). To ensure that any effects attributed to the measure of offsetting distributional patterns in the empirical tests

⁵¹ Most particularly, Council documents 15310/1/05 REV 1 (for the Services Directive), 15204/04 and 15204/04 ADD1 (for the Battery Directive) and 7275/05, 8180/07, 7814/03, 7280/03 and 6658/03 (for the Racism and Xenophobia Framework Decision) were used.

are not dependent on the particular values assigned to each category, several different sets of values were assigned to the categories in both the distance and linked give components of the measure. These different numerical values are summarized in Table 5.1.

Table 5.1. Value Assignments to Categories in Measure of ODP

	Zero	Small	Medium	Large	All
Distance 1 (D1)	0	.1	.5	1	n/a
Distance 2 (D2)	0	.2	.5	1	n/a
Distance 3 (D3)	0	.3	.5	1	n/a
Linked Give (G1)	0	.2	.5	.7	1
Linked Give (G2)	0	.2	.5	.8	1
Linked Give (G3)	0	.2	.6	.8	1

5.5.2 Coding the Distance Component: $|A - B|$

First, the *distance* between the each pair of states' ideal points is coded in a categorical way by plotting member state positions on each one-dimensional issue space in the bargain. Figure 5.5 helps to clarify this coding procedure. Based on these categories, three sets of numerical values were used to assign a numerically-valued distance between the ideal points of each pair of actors on each issue. These sets of numerical values are labeled D1, D2 and D3, and are summarized in Table 5.1.

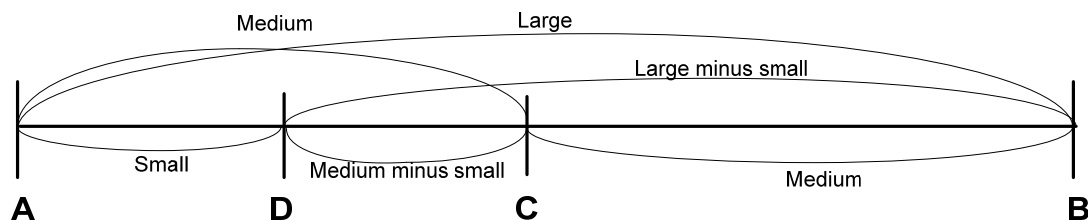


Figure 5.5. Coding the Distance Between Players' Ideal Points

The category for a *large* distance between states' ideal points represents the distance between the most extreme positions on any given issue. All values of this category are assigned a value of 1, normalizing the range of possible agreements on the issue to 1, a standard in the literature. In Figure 5.5, the positions of these types of actors are represented by A and B. Actors with ideal points that are less extreme can then be plotted in relation to these extreme positions. Actors not associated with either extreme, but who are "located in the middle" correspond to point C in Figure 5.5. They are coded as a *medium* distance from each extreme. Given that they are equally distant from both extreme positions, this medium distance category is assigned a numerical value of 0.5, thus placing these actors in the center of the issue space. Actors close to one of the two extremes, but with a preference which is not perfectly aligned with this extreme position are coded as a *small* distance from the extreme position to which they are most closely associated. In Figure 5.5, actors with position D are coded as a *small* distance from the extreme position, A.

Being "closely associated with" one of the extremes does not naturally correspond to a particular numerical value, as the large and medium distances described above do. Thus, the values assigned to this category differ across the three distance measures that I construct. These can be seen in Table 5.1. The distance measure labeled D1 codes a *small* distance as very close to the extreme position it is associated with, assigning a numerical value of 0.1 to the *small* distance category. The second distance measure, D2, codes this category as a bit further from the extreme, assigning a value of 0.2 to the *small* distance category. The final distance measure, D3, codes this category with a numerical value of 0.3, and thus places these actors closer to the "middle" position than to the extreme they are associated with. Actors who share the same ideal

point are always assigned a distance of 0. Given these numerical values for the small, medium and large categories, all other distances that may arise can be coded.⁵²

5.5.3 Coding the Linked Give Component: (A_L and B_L)

Second, the component of the measure which captures the *linked give* of actors is coded. The category representing a *small* linked give is assigned when “winning” (i.e., achieving the most preferred outcome) on a particular issue is “very important” to an actor. It is coded *zero* if the actor is unwilling to accept any outcome other than its most preferred position. An actor’s linked give is coded as *large* when winning on a particular issue is relatively unimportant to the actor. Note that because this is a measure of linked give, it could be unimportant because the issue itself has low salience to an actor’s interests, because the issue is unimportant relative to other issues included in the bargain, or a combination of both. The linked give is coded as *all* if an actor on one extreme is willing to accept an agreement located at the ideal point of the other extreme. Finally, if the actor’s importance of winning on the issue falls in-between these two sets of linked give categories, the linked give is coded as *medium*.

In the assignment of numerical values to these linked give categories, it is important to recognize that there is no particular theoretical underpinning specifying which combinations of linked gives should overlap and produce a bargaining space. For example, if actors’ ideal points are located at opposite extremes and one has a large degree of linked give and the other has a small give, their range of acceptable agreements may or may not produce a bargaining space.

⁵² For example, an actor with a low distance from one extreme has a “large minus small” distance from the other extreme, and a “medium minus small” distance from the center.

The assignment of numerical values to these linked give categories is designed to cover different possibilities for various combinations of linked gives.

The linked give measure, G1, codes a small degree of give as 0.2, a medium give as 0.5 and a large give as 0.7. In this coding, if actors' ideal points are a large distance apart and both have medium linked give, they will overlap at one point – the bottom line of both actors. If one has a small linked give and the other has a large linked give, there will be no space of possible agreement and their D_{zm} value will be -0.1.⁵³ The second linked give measure, G2, codes a small degree of give as 0.2, a medium give as 0.5 and a large give as 0.8. Different from the previous measure, if the ideal points of the actors are located at opposite extremes, and one has a small linked give and the other has a large linked give, their D_{zm} value will be 0, indicating a single point of overlap will exist.⁵⁴ In this situation, if both have medium linked give, a single point of overlap will exist, as in the G1 measure. The final measure, G3, considers the possibility that both actors having a medium linked give may produce a larger bargaining space than is assigned by the previous two measures. It values small give as 0.2, medium give as 0.6 and large give as 0.8. In the situation in which actors' ideal points are at opposite extremes, if both have a medium-valued linked give, their D_{zm} value will be 0.2, while a large/small linked give combination will produce a single point of overlap.⁵⁵ For all three measures, the *all* category is coded with a value of 1, given that this category refers to the willingness of an actor at one

⁵³ For actors whose ideal points are a large distance apart, one with a small linked give, the other with a large linked give, the calculation based on the G1 measure is: $D_{zm} = A_L + B_L - |A - B| = 0.2 + 0.7 - 1.0 = -0.1$.

⁵⁴ For actors whose ideal points are a large distance apart, one with a small linked give, the other with a large linked give, the calculation based on the G2 measure is: $D_{zm} = A_L + B_L - |A - B| = 0.2 + 0.8 - 1.0 = 0$.

⁵⁵ For actors whose ideal points are a large distance apart, both with medium linked give, the calculation based on the G3 measure is: $D_{zm} = A_L + B_L - |A - B| = 0.6 + 0.6 - 1.0 = 0.2$. For actors whose ideal points are a large distance apart, one with a small linked give, the other with a large linked give, the calculation based on the G3 measure is: $D_{zm} = A_L + B_L - |A - B| = 0.2 + 0.8 - 1.0 = 0$.

extreme to accept an agreement located at the other extreme. Similarly, for all three measures, the *zero* category is coded with a value of 0, indicating that the actor is unwilling to accept any outcome other than its ideal point.

5.5.4 Calculating the Measure

Given that some linked give component values are greater than some of the distance component values, the situation in which the particular numeric values of linked give are larger than the distance between the actors' ideal points should be considered. This situation could arise, for instance, if actors' ideal points are a short distance apart and both have a high degree of linked give. If this situation is not considered, it may artificially inflate the bargaining space measure because the value of the overlap calculated by the formula $D_{zm} = A_L + B_L - |A - B|$ will exceed the distance between the actors' ideal points, and thus exceed the actual size of the bargaining space. Only the overlap between actors' ideal points actually represents potential bargaining space, so only this distance is considered in the measure. In other words, if the calculation of D_{zm} produces a value greater than the actual distance between the actors' ideal points, *only* the distance between their ideal points is the value of the overlap assigned for that pair.

Combining the three distance measures with the three linked give measures in Table 5.1 produces nine possible combinations of values that can be assigned in the measurement of the degree of overlap brought about by the issue structure (represented by D , as discussed above). Distance 1 (D1) can be combined with the three possible linked give measures (G1, G2 and G3), as can distance 2 (D2) and distance 3 (D3).

5.6 MEASURING ODP PART 5: TWO TYPES OF MEASURES

The measurement of D described above produces an average value of the bargaining space for a bargain over a given set of issues. The greater the value of D , the more offsetting are the distributional patterns of the set of issues being analyzed. This measurement rule and the nine different measures derived from the different numerical assignments to the coded categories provide the first type of measure for the degree to which a given set of issues possesses offsetting distributional patterns.

However, this “average bargaining space” measure may not be the best way of capturing the concept of offsetting distributional patterns. For example, the greatest degree of overlap will be produced when an issue is not important to either actor in a bargaining pair. However, offsetting distributional patterns are often found when one issue is important to one actor, and another issue is important to another actor (Tollison and Willett 1979). Overlap will exist on each issue, but it may not be as large as in the case when both issues are unimportant to both actors. We can address this by simply dichotomizing the D computed using any (or all) of the nine measurement combinations discussed immediately above. Hence, rather than measuring the actual size of the bargaining space, this alternative measure simply indicates whether or not a bargaining space is produced by a given issue structure.

In this dichotomization, offsetting distributional patterns exist in a given bargain when there is any overlap in the issues in the bargain on average; they do not exist when there is not overlap. For each of the nine measures of the degree of overlap in a bargain, any value greater than or equal to 0 is coded 1, indicating that the issue structure is *offsetting*. Any value less than

0 is coded 0, indicating that the issue structure is *not offsetting*.⁵⁶ These dichotomous variables provide a second way of measuring the offsetting distributional patterns of a given issue structure.

5.7 MEASURING ODP: SUMMARY

The discussion above provides rules for the empirical measurement of a central theoretical concept in the issue linkage literature – offsetting distributional patterns. It provides two ways to measure this important concept. The first captures the idea that the degree to which issues are offsetting may be best captured by a continuum, providing a measure of the average bargaining space brought about by the linkage of a given set of issues. The second captures the idea that offsetting distributional patterns may be a concept in which degree is not the main feature, but rather the key idea is whether or not the issues are offsetting. Both are implicitly present in the issue linkage literature, and therefore both are considered in this project. In addition, nine different combinations of numerical value assignments are considered for each type of measure to reduce the possibility that assigned values bias the results. Most importantly, because these measures are weighted by the numbers of issue-pairs, they are generalizable and comparable across different bargaining situations.

It should also be noted, however, that these measurement rules use the bargaining space in order to proxy the degree to which the distributional patterns of issues are offsetting. It is therefore important to demonstrate that in a given bargain, the bargaining space does not change

⁵⁶ When the overlap is equal to 0, there exists one point in the issue space on which both actors would be willing to agree, and thus a bargaining space does exist. Therefore, 0 is coded as offsetting, rather than not offsetting in this dichotomization.

due to a change in the issues, positions, or linked gives of member states. For each case that is analyzed, this issue will be carefully discussed and defended empirically – showing that changes in the bargaining space do not impact the measure of offsetting distributional patterns. This will be done in the case studies presented in Chapters 7 through 9, which show that in these cases, any changes in issues, positions, or linked gives take place between different bargaining interactions, but not *within* those bargaining interactions. Thus, for each bargaining interaction analyzed and assigned a given measure of offsetting distributional patterns, the size of the bargaining space remains constant.

Before undertaking these case studies, however, these measurement rules discussed above will be used to construct a large-N dataset and empirical test of the dissertation's central hypothesis. After demonstrating the central correlation between the degree to which the distributional patterns of a set of issues is offsetting and the cooperative nature of state bargaining strategies in the next chapter, in-depth case analyses in Chapters 7 through 9 will be used to defend the measures used in this test, as well as to expand on the test, highlighting the underlying causal mechanisms at work.

6.0 LARGE-N STATISTICAL ANALYSIS

Previous research in International Relations has typically assumed that the distributional issues in a bargaining interaction make cooperation difficult and potentially costly, and thus lead states to adopt bargaining strategies that are largely non-cooperative in nature. I argue, however, that states will adopt more cooperative bargaining strategies when the issues over which they are bargaining have more offsetting distributional patterns. They should therefore be observed willingly offering concessions, and doing so to a fairly significant degree in some bargaining situations, depending on the characteristics of the issues over which they are bargaining. This argument leads to the following central hypothesis that this chapter seeks to test: *the more offsetting are the distributional patterns of a set of issues over which states bargain, the more cooperative their bargaining strategies will be, holding all else constant.*

In making this argument, I draw on the concept of “offsetting distributional patterns” from the issue linkage literature. Previously, the empirical testing of arguments that use this central concept has been impeded by the lack of generalizable coding rules that could be used to empirically observe and measure the degree to which the distributional patterns of a set of issues are offsetting. Chapter 5 addressed this important issue, presenting measurement rules for this concept, thus allowing for an empirical test of the argument made here to be performed. The remainder of this chapter is dedicated to carrying out this empirical test. I first present measurement rules for the dependent variable – “cooperative bargaining.” I then lay out the

variables that will be included in the model to control for potential alternative explanations. Finally, I conduct a large-N statistical test of the central hypothesis, and assess the statistical and substantive significance of the results.

6.1 DEPENDENT VARIABLE: COOPERATIVE BARGAINING

This project seeks to explain how the issue linkage structure of a bargain impacts the cooperative nature of state bargaining strategies. In addition to providing empirical measurement rules for the offsetting distributional patterns of linked issues, this project also lays out rules for empirically coding the cooperative nature of a bargaining strategy. This is a second important empirical contribution of the project, as previous conceptualizations of the cooperative nature of bargaining strategies (the “integrative bargaining” and “problem-solving” concepts in particular⁵⁷) are defined differently by different scholars. They also tend to be conceptualized in a dichotomous way (e.g., integrative versus distributive bargaining, or bargaining versus problem solving) and these categories often include several factors that are not necessarily comparable or are not connected to specific, observable factors that can be used to empirically identify a particular bargaining strategy in different bargaining settings. The conceptualization and measurement rules presented below address these issues. Part 1 lays out three main components which factor into how cooperative a bargaining strategy is, all related to the willing offering of concessions. Part 2 uses these components to construct two different measures for the concept of cooperative bargaining.

⁵⁷ For an overview of this concept, see discussions in (Sebenius 1992; Hopmann 1995).

6.2 MEASURING COOPERATIVE BARGAINING PART 1: COMPONENT FACTORS

Building on the standard definition of cooperation in the IR literature, “cooperative bargaining” was defined in Chapter 1 as the degree to which the overall strategy of a state engaged in a bargaining interaction is characterized by willingly making offers that are Pareto-superior for others actors. It is the degree of “cooperative bargaining” as defined in this way that this project seeks to explain.

Based on this formal definition, three main factors play a role in determining how “cooperative” a strategy is: (1) the type of actions adopted by the actor; (2) the distribution of these actions; and (3) the *quid pro quo* nature of these actions. These factors are derived directly from the definition of this concept. The first factor captures whether or not (willing) Pareto-superior offers are made; the second captures “the degree to which” these offers characterize a given strategy; the last captures the degree of “willingness” with which these offers are made. Taking into account these factors, an ordered categorical variable of the degree to which a bargaining strategy is “cooperative” can be created.

6.2.1 Component 1: Types of Actions

Four main types of actions are available to states when they are engaged in a bargaining interaction. First, consistent with cooperative bargaining tactics, they could willingly offer concessions to the other parties. Second, they could wait for, request, or demand concessions from the other parties. Finally, they could combine this request/demand for concessions with

specific actions designed to elicit these concessions from the other parties. Concessions could then also be made *unwillingly* in response to these tactics.

Any bargaining strategy in which tactics designed to elicit concessions are adopted is the least cooperative type of bargaining strategy an actor can adopt. These strategies embody the “non-cooperative” extreme of the dependent variable continuum. A step up from that would be a strategy in which an actor offers no concessions, and merely waits for, requests, or demands concessions from the other parties, but does not adopt any additional tactics designed to extract these concessions. More cooperative would be strategies in which concessions are offered, but are done so “unwillingly” – i.e., only because the other party engaged in competitive strategies elicits those concessions. The most cooperative strategy is that in which concessions are willingly offered by an actor.

In a bargaining strategy in which concessions are willingly offered, there is variation in the degree of those concessions and the manner in which the concession is offered. The other two factors which characterize the cooperative bargaining continuum address these issues.

6.2.2 Component 2: Magnitude of Concession

When concessions are willingly offered by an actor, a second important factor in assessing the cooperative nature of their bargaining strategy is the degree to which concession-offering characterizes their overall strategy. In a strategic bargaining interaction fully characterized by cooperative bargaining strategies, all actors involved are expected to adopt more cooperative strategies and willingly offer (at least some) concessions. Assessing the magnitude of the concessions offered is therefore an important step in measuring the cooperative nature of the overall bargaining strategy.

The greater is the magnitude of the concessions offered by an actor, the more cooperative its bargaining strategy is, holding all else constant. Therefore, any strategy characterized by a large degree of concessions given is more cooperative than a strategy in which very few concessions are offered. For purposes of coding this implicit underlying continuum, three categories of the degree of concessions are created, labeled *high*, *medium* and *low*. Most cooperative is a *high* degree of concession. This category corresponds to a strategy in which an actor offers large concessions – making an offer very far in the issue space from its preferred outcome on at least one issue, or making several concessions on different issues that are of a lesser degree. Least cooperative is *low* degree of concessions, corresponding to a strategy in which “very few” concessions are offered, and those that are offered are very close to an actor’s most preferred outcome. In between these two extremes is the *medium* category, which corresponds to a strategy in which either a few medium-sized concessions are made, or a large number of small concessions are made on several issues.

6.2.3 Component 3: *Quid pro quo* Nature of Concessions

Finally, the *quid pro quo* nature with which concessions are offered may also be important in determining how cooperative a given bargaining strategy is, as it relates to the degree of willingness of the offer. Concessions may first be offered *unconditionally* (i.e., without any guarantee of reciprocity). However, the offering of concessions may also be *linked* to the receipt of concessions on an issue included in the bargaining structure.⁵⁸ They may also be withheld until *after* concessions have been received.

⁵⁸ The issue linkage analyzed in the independent variable refers to a given set of linked issues which structure a

Holding all else constant, offering concessions unconditional on the receipt of concessions would be the most cooperative type of concession-offering. Less cooperative would be offering concessions in a way that links a particular concession to the receipt of some concession from the other party or parties. Least cooperative would be withholding concessions until after concessions have been received from the other party.

6.3 MEASURING COOPERATIVE BARGAINING PART 2: CODING RULES

Taking into account these factors, an ordered categorical variable of the degree to which a bargaining strategy is “cooperative” can be created. These factors can be combined in different ways with different weight given to each, allowing for a degree of robustness in the empirical measurement of the concept.

Central to the conceptualization of a “cooperative bargaining” strategy is the willing offering of concessions. Thus, for all measures of the dependent variable, whether or not concessions were willingly offered is the first and most basic categorization of any bargaining strategy. This sorts bargaining strategies into two main categories – willing concessions and no willing concessions.

If willing concessions were *not* made, three types of actions may have been adopted. Ordered from the most non-cooperative to the most cooperative non-concession offering actions, these are: the utilization of concession-eliciting actions, waiting/requesting/demanding

bargain. The linkage of concessions discussed here in this aspect of the dependent variable corresponds to a common understanding of issue linkage in the IR literature. However, in this context, linkage of concessions refers only to linkage of concessions across issues included in the structure of the bargaining game. It does not refer to an actor choosing to bring a new issue into the bargain.

concessions, or the unwilling offering of concessions. In all formations of this variable, these three types of actions form the three “least cooperative” categories. If no concessions were willingly made and any concession-eliciting tactics were adopted by an actor, their bargaining strategy is coded 0. If no concessions were made (willingly or unwillingly), but no concession-eliciting action was adopted, the strategy is coded 1. Finally, if no concessions were willingly made, but some were made unwillingly, the bargaining strategy is coded 2. If willing concessions *were* made, the other factors can be used to code the degree to which that concession-offering action was more or less cooperative than other types of concession-offering actions.

6.3.1 Cooperative Bargaining, DV1

Based on the conceptualization of “cooperative bargaining” provided above, the magnitude of concessions is more central to the concept of cooperative bargaining than their *quid pro quo* nature. Thus, the degree of concessions given relative to those received is given greater weight in the construction of this measure. This degree factor is used to sort the willing concession category into three categories. Ordered from the least cooperative to the most cooperative, these are: a low degree of concession, a medium degree of concession, and a high degree of concession.

Because this factor is given greater weight than the timing of concessions, any strategy with a medium level of willing concessions is considered more cooperative than any strategy with a low level of willing concessions, regardless of the timing of those concessions. Similarly, any strategy with a high level of willing concessions is considered more cooperative than any

strategy with a medium (or low) level of willing concessions, regardless of its *quid pro quo* nature.

Finally, the *quid pro quo* factor is used to create three categories within each of these “degree” categories. Within each degree category, any concession made only *after* specific concessions are received from others is less cooperative than any concession *linked to* the receipt of a concession in return. Finally, any concession made in a way that does not guarantee any concessions in return (i.e., *unconditionally*) is the most cooperative strategy.

This coding yields nine categories in addition to, and more cooperative than, the three categories in which no willing concession is made. If a low degree of concessions were made after the receipt of specific concessions, the strategy is coded 3; low concessions linked to the receipt of concessions is coded 4; and low concessions made unconditional on receipt of concessions is coded 5. If a medium degree of concessions were offered, but only after the receipt of concessions, the strategy is coded 6; medium concessions linked to receiving concessions is coded 7; and medium concessions made unconditional on the receipt of concessions is coded 8. Finally, if a high degree of concessions were offered but only after some concessions were received, the strategy is coded 9; high concessions linked to the receipt of concessions is coded 10; and high concessions made unconditionally is the most cooperative type of bargaining strategy, and is coded 11.

Using these three factors, this first measure creates an ordered, 12-category categorical variable of the degree to which a bargaining strategy is “cooperative,” with greater values representing a more “cooperative” bargaining strategy. Because it takes into account all three factors, I argue that this measure best reflects what the cooperative bargaining concept is designed to capture. The variable coding is summarized in Table 6.1 below.

Table 6.1. Categorical Assignments in Measures of Cooperative Bargaining

Category	DV1	DV2
0	Concession-extracting tactics	Concession-extracting tactics
1	No concession/demand	No concession/demand
2	Unwilling concession offered	Unwilling concession offered
3	Concession offered; Low degree; Only after concessions received	Concession offered; Low degree
4	Concession offered; Low degree; Linked to concession receipt	Concession offered; Medium degree
5	Concession offered; Low degree; Unconditional on concessions received	Concession offered; High degree
6	Concession offered; Medium degree; Only after concessions received	
7	Concession offered; Medium degree; Linked to concession receipt	
8	Concession offered; Medium degree; Unconditional on concessions received	
9	Concession offered; High degree; Only after concessions received	
10	Concession offered; High degree; Linked to concession receipt	
11	Concession offered; High degree; Unconditional on concessions received	

6.3.2 Cooperative Bargaining, DV2

I construct a second measure of cooperative bargaining to check the robustness of the empirical tests employing the measure just developed. While the *quid pro quo* nature of concessions may capture the degree of willingness of an offer, and therefore play an important role in whether or not a bargaining strategy is cooperative in nature, willingness may also simply be a dichotomous concept. The key factor may therefore simply be whether or not a concession is willingly offered. Hence, I construct this second measure to see what effect the *quid pro quo* factor in the first measure has on the empirical findings in my large-N analysis. This second measure merely sorts strategies based on whether or not a concession was willingly offered, without considering whether there is a *quid pro quo*.

This measure follows the same steps as the measurement above, but leaves out the final step in which the degree of concession categories are further broken down into component parts based on the timing of those concessions. The second measure is a 6-category ordered, categorical variable with categories 0, 1 and 2 the same as in the first measure. Categories 3, 4, and 5 code the willing offering of a small degree of concessions (Category 3), a medium degree of concessions (Category 4), and a high degree of concessions (Category 5), respectively. This variable coding is summarized in Table 6.1 above.

6.3.3 Empirical Evidence for Coding

In the EU bargains examined here, primary interview evidence was gathered on the bargaining strategies adopted by the member states. 118 elite interviews were conducted with member state

representatives in order to gather information about the particular tactics and strategies they adopted in each of these cases. In addition to this self-reporting, interviews with member state representatives were also used to gather information about the strategies adopted by the other member states in the bargain. Finally, interviews with officials from the Council General Secretariat and European Commission who participated in these bargains were also used to gather information about the strategies adopted by the member states. These multiple sources regarding member state bargaining strategies allow for increased confidence in the accuracy of the evidence.

6.4 MODEL SET-UP: CONTROLLING FOR ALTERNATIVE EXPLANATIONS

Given the measures laid out above, I undertake a statistical test to determine if the relationship posited between offsetting distributional patterns and cooperative bargaining holds. To carry out the test, variables are included to control for the potential alternative explanations of cooperative bargaining described in Chapter 4. These alternative explanations are related to the characteristics of a given state, the characteristics of a given bargain, and the institutional setting within which the bargaining interaction takes place.

6.4.1 Control Variables: State Characteristics

First, a variable is included in the model to control for the power of a state, with the expectation that more powerful states should be more likely to exploit that power through the use of competitive, non-cooperative bargaining strategies, and therefore less likely to adopt cooperative

bargaining strategies. Two different measures are used to capture a state's power. The first, unique to the case of the EU being examined here, is the voting weight of each member state (*voting_weight*). The largest member states (France, Germany, Italy, and the United Kingdom) have 29 votes each, while the smallest member state (Malta) has 3 votes.

However, because this measure of power may be less useful outside the EU context, a second measure of a state's power is employed. This variable measures the power of a state in terms of its economic power in the international system. The GDP of a state (*GDP*) is used for this purpose and serves as a robustness check on the models that employ the voting weight variable.⁵⁹

Second, variables are included in the model to control for particular political cultures that may make a state more or less likely to adopt a cooperative bargaining strategy. A dummy variable coded 1 for Scandinavian countries is included (*Scandinavian*). Scandinavian countries are said to be more cooperative in nature than many other states (e.g., Eriksen and Weigård 1997), and therefore I introduce a control for these particular states.

In addition, a dummy variable coded 1 for countries that are part of the Euro-zone are included (*Euro*). States that have chosen to give up their own currency in exchange for the Euro may be more cooperative in nature than states that have not. Also, the possession of the Euro may make states approach bargains at the European level in a different way if their own national financial situation may be impacted by these types of decisions.

Finally, a dummy variable coded 1 for new EU member states⁶⁰ is included (*new_ms*). The new member states have a very different history than the states of Western Europe, with

⁵⁹ This variable codes the natural log of each state's GDP, as is standard in the IR literature.

⁶⁰ "New" member state is taken to mean the ten Eastern and Central European states brought in during the 2004 enlargement (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and

many having been a part of the sphere of influence of the former Soviet Union. In addition, these states have recently undergone accession negotiations in which significant changes to their national legislation were imposed by the EU, largely without question. This may have created a precedent and culture of EU negotiations for these countries that serve to make them less likely to oppose positions which they do not share.

The dummy variable for the new member states may also control for a socialization effect. Because these states had not been members of the EU for very long when the cases being analyzed were negotiated, they may not yet have been socialized to the “norms” of the EU. These norms have been argued to include more cooperative types of tactics associated with a “culture of compromise” (Lewis 1998). Following this logic, the new member states may be less likely to engage in cooperative bargaining than the other members of the EU. In other words, the effect of the new member states variable may cut either way, and indeed, the contradictory effects may cancel one another.

6.4.2 Control Variables: Characteristics of Bargain

In addition to the controls for state characteristics, I employ two variables intended to control for characteristics of the bargain itself. First, I include a dummy variable coded 1 for highly politicized bargains (*publicity*). On issues that are highly politicized, negotiators may be unwilling to compromise the narrow self-interest they represent, even on issues of little relative importance to their state’s overall interests, while on issues of lesser politicization they may be more willing to engage in compromise. This may be due to the level of publicity and public

Slovenia), and Romania and Bulgaria which joined the EU in 2007.

scrutiny attached to more politicized issues (Elgström and Jönsson 2000; Stasavage 2004) and/or possible reputational concerns arising with being identified as “giving” on these types of issues.⁶¹

Second, I include a variable that captures the type of voting rule used to take a decision. Where unanimity is the voting rule, each negotiator possesses the ability to veto an agreement. In these types of decision-making settings, negotiators may be less willing and likely to engage in cooperative processes where ‘they don’t have to’ (e.g., Scharpf 1988; Elgström and Jönsson 2000; Michalak 2001). A dummy variable for (qualified) majority voting rules (*QMV*) is therefore included in the model, coded 1 in QMV settings and coded 0 in unanimity settings.

6.4.3 Control Variables: Strategic Interaction

Given that each bargain is a strategic interaction, not only should the institutional structure of the game impact a state’s bargaining strategy, but that strategy should also be a (best) response to the strategies adopted by the other member states (Nash 1951).⁶² Consequently, the strategies of the other member states (*others_strategies*) is a central control variable in this model.⁶³ This variable is an average of the value of the dependent variable for all other states in a given bargain, excluding the state of interest. For example, in the Racism Framework Decision, in the row in the dataset examining the strategy of France in this negotiation, the value of the others’

⁶¹ On some issues, politicization may also bring strong partisan preferences into the national decision-making process, which may also lead to less willingness to compromise.

⁶² This is consistent with the understanding of a bargain as a strategic game as it is conceptualized in the rational choice theoretical literature (e.g., Lake and Powell 1999) and in this project.

⁶³ This is also important to include to control for the presence of strategic interaction in the model, given that the model assumes independence of all the cases. However, given that the dependent variable is not the *outcome* of the interaction, but rather the *strategy* adopted in the interaction, solutions such as that proposed in (Signorino 1999) cannot be used. Controlling for the other’s strategies is therefore the alternative solution proposed here.

strategies is the average value of the cooperative nature of the strategies adopted by the other 24 member states in this negotiation (not including France).

In addition, because a state's strategy is argued to be the (best) response to the structure of the game and the other states' strategies *taken together*, an interaction term which includes these two variables is included in the model ($ODP*others$). This variable, though theoretically important for capturing the strategic interaction presented in the model, is not the focus of the hypothesis here. Because it complicates the interpretation of the central explanatory variable, and is not possible to run in all formations of the model, as will be discussed in-depth below, the statistical test is performed both with and without the inclusion of this variable. However, given its central theoretical importance in the understanding of a strategic interaction, I argue that the models that include this variable are the most accurate models of this bargaining process.

Finally, to control for potential endogeneity concerns, a lagged dependent variable is included in the model (*lagged_DV*). For those bargains which followed a prior bargaining interaction on the same legislative decision, the lagged DV captures the strategy adopted by a member state in the previous bargaining round. For those bargaining interactions taking place for the first time on a given piece of legislation, the lagged DV is coded as the median value of the dependent variable.⁶⁴ This therefore serves to code the lagged DV as neither very cooperative nor very non-cooperative in a situation in which no previous bargaining interaction was present.

⁶⁴ The median value is rounded to 6 for the 12-category dependent variable and 3 for the 6-category variable.

6.4.4 Controlling for Institutional Setting

As a central component of this research design, all negotiations considered take place within the Council of Ministers in the European Union. Any possible alternative explanations associated with the social institution of the EU or any other particular institutional features of the EU are therefore held constant as the dependent variable of interest varies. In addition, all cases analyzed are considered “low politics” (Waltz 1979) decisions. Given that the institutional setting and low/high politics distinction do not vary while the variable of interest does, they cannot be used to explain the variation in the dependent variable.⁶⁵

In addition, holding the setting of the European Union constant allows for many potential mitigating factors which could influence the results to be held constant. First, the particular individuals representing the state may have their own bargaining approach which impacts the bargaining strategies adopted. In addition, the particular international context within which a bargain is situated may impact bargaining strategies. Furthermore, the particular norms and rules governing a bargaining interaction may also impact the strategies states adopt. The cases chosen here all take place within the Council of Ministers institutions in the European Union and all take place within the same brief time-span (from 2004-2007). These potential mitigating factors are thus largely held constant across the bargains considered. This is an important part of the research design, which approximates as closely as possible an experimental design in which mitigating factors are held constant, while the variables of interest vary.

⁶⁵ A dummy variable coded 1 for bargaining that takes place within the EU institutions (*EU*) is included in the dataset in preparation for further expansion of the project, though it does not play a role in the statistical analyses undertaken here because it does not vary across these cases.

6.5 THE STATISTICAL MODEL

The unit of analysis in this study is “member state – bargain.” Each member state’s bargaining strategy is examined in each of five bargaining interactions – the two phases of the Services Directive and Framework Decision on Combating Racism and Xenophobia, and the negotiations over the Battery directive. The number of member states involved in each bargaining interaction varied across these directives. In all five cases, the states of Western Europe⁶⁶ and the Central and Eastern European states⁶⁷ that joined the EU in 2004 participated in the negotiations. However, Romania and Bulgaria did not join the EU in January 2007, though they were active participants in the decision-making process preceding their accession by about two years despite their lack of an official vote until 2007. These two states were therefore participants in some of the bargains, but not others.

There were therefore twenty-seven states involved in the bargaining interaction in the second phase of the Racism and Services dossiers, and twenty-five states in the first phase of these dossiers, and in the Battery directive. That leads to an N of 129 in the statistical analysis. With this unit of analysis, the expectation is that in bargaining interactions with issue structures with more offsetting patterns, each member state is expected to adopt more cooperative tactics, controlling for the potential alternative explanations discussed above.

Given the ordered, categorical nature of the dependent variable, the statistical models presented here are ordered logit models. Several sets of models were run – both with and without the inclusion of the interaction term that is designed to capture the interactive effect of

⁶⁶ These states include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom.

⁶⁷ These states include Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

the structure of the bargaining interaction (analyzed here in terms of offsetting distributional patterns) and the bargaining strategies adopted by the other states. Both sets of models were run, first, to demonstrate the robustness of the results. In addition, both sets of models are included here to avoid criticism that the interactive effect is necessary for the hypothesis to hold and, thus, that it is this interaction alone, rather than the distributional patterns of the set of issues themselves, that drives the findings.

In the findings reported here, the results from the models *without* the interaction are presented in Table 6.2 and Table 6.3 as Models 1 through 4. After a discussion of the statistical and substantive significance of these results, models with the interaction term are then included as robustness checks. The results from these models are presented in Table 6.4 and Table 6.5 as Models 5 through 7.

6.6 STATISTICAL MODELS: A FIRST CUT (NO INTERACTION)

To test the central hypothesis, ordered logit models were run for each possible combination of the independent and dependent variable measures (yielding 36 models). Four of these models are reported in Table 6.2 below. The central findings reported here and discussed below are statistically and substantively significant across all thirty-six formulations of the model, as well as across all thirty-six robustness-check models which use a state's GDP as a measure of its power rather than its EU voting weight.⁶⁸

⁶⁸ The results from all of these additional models are reported in Appendix B.

All models reported in Table 6.2 use the offsetting distributional patterns measure coded with distance value D1 and linked give value G1. Models 1 and 2 adopt the “degree of offsetting distributional patterns” measure, and Models 3 and 4 adopt the dichotomization of this degree measure. Models 1 and 3 use the 12-category dependent variable (DV1); Models 2 and 4 use the 6-category dependent variable (DV2).

Model 1, I argue, best analyzes the theory presented here, as it adopts the 12-category dependent variable and analyzes offsetting distributional patterns as a matter of degree, as does the theory laid out here. The other models are included to check the robustness of the results.

Table 6.2. Statistical Output: ODPs and Cooperative Bargaining (No Interaction)

	Model 1 ODP D1/G1, DV1	Model 2 ODP D1/G1, DV2	Model 3 Dichotomous ODP D1/G1, DV1	Model 4 Dichotomous ODP D1/G1, DV2
Offsetting	17.770**	35.291**	452.229**	70.762**
Distributional Pattern	(5.090)	(8.656)	(68.713)	(10.418)
Others' strategies	-1.170*	-6.748**	-160.016**	-52.954**
	(.581)	(2.088)	(24.327)	(7.955)
Lagged DV	.159	-.085	.196	-.254
	(.114)	(.239)	(.213)	(.276)
Voting Weight	-.054*	-.056*	-.001	-.069*
	(.022)	(.024)	(.037)	(.028)
QMV	3.115**	5.389**	31.086**	-3.319**
	(1.056)	(1.359)	(4.887)	(.977)
Publicity	-1.745*	-3.941**	-92.041**	-14.132**
	(.768)	(1.024)	(14.066)	(2.127)
Scandinavian	-.248	-.532	.537	-.685
	(.695)	(.806)	(1.222)	(.873)
Euro	.232	.201	.273	-.382
	(.650)	(.703)	(1.057)	(.791)
New MS	.029	-.100	.885	-1.204
	(.759)	(.824)	(1.250)	(.956)
N	129	129	129	129
pseudo R2	.105	.215	.800	.492
Log likelihood	-225.664	-118.617	-50.408	-76.783
Chi²	53.09	65.19	403.60	148.86
(prob>chi²)	(.000)	(.000)	(.000)	(.000)
PRE	19.48%	34.95%	92.51%	63.11%
(Modal %)	(22.48%)	(47.29%)	(22.48%)	(47.29%)

* represents statistical significance at the .05 level

** represents statistical significance at the .01 level

6.6.1 Statistical Results: Main Findings

Across all of these statistical models, the predictions of the theory presented here hold. The more offsetting the distributional pattern of the issues included in a given bargain, the more likely a state is to adopt cooperative bargaining strategies. In addition, these models demonstrate that the effect of more offsetting distributional patterns on a state's bargaining strategy not only follows the predictions of the theory, but the effect is statistically significant at the .01 level of significance. This result holds even when controlling for the other potential alternative explanations and the bargaining strategies adopted by the other states.

Importantly, the other results reported in this table follow the predictions based in intuition and the arguments of other studies. First, consistent with much IR theory and the analysis of Dür and González (2007) of EU bargaining, the more powerful a state is (operationalized in terms of voting weight), the less likely it is to adopt cooperative bargaining strategies. This is evidenced by the negative and statistically significant effect, which holds in three of the four models reported in Table 6.2.

In addition, consistent with the predictions of studies which examine the effects of greater politicization on bargaining interactions (the variable labeled "publicity"), the more politicized and public are the issues in contention in a bargaining interaction, the less likely states are to adopt cooperative bargaining strategies in which concessions are made to other states. This finding holds for all four models presented here.

Furthermore, when the voting rule is a majority voting rule (QMV in the case of the EU) rather than unanimity, states are more likely to adopt cooperative strategies. This finding holds for three of the four models, and is consistent with the interviews I conducted in which member

state representatives reported that QMV makes states “more flexible” because the possibility exists to be outvoted (Interviews 2005-2007).

6.6.2 Statistical Results: Others’ Strategies

With the understanding of bargaining as a strategic interaction, the strategy adopted by a given actor should be the result of both the institutional structure of the bargaining game *and* the strategies adopted by other actors. As demonstrated in Table 6.2, the institutional structure of the bargaining game, analyzed here in terms of the distributional patterns of the issue structure (i.e., “offsetting distributional patterns”) exerts a statistically significant effect on the bargaining strategy adopted by the states *as do* the strategies adopted by other actors. Thus, the empirical findings are consistent with expectations that bargaining is a strategic interaction. Without taking into account the institutional structure and the strategies of other states engaged in the bargaining interaction, studies which analyze the effects of various factors on bargaining strategies are likely to suffer from omitted variable bias.⁶⁹

The effect of the strategies adopted by the other states involved in the bargaining interaction is consistent with intuitive expectations. First, if other states are offering concessions, there is simply less policy space over which a state can make concessions in response. In addition, this finding indicates that if other states adopt cooperative strategies, demonstrating their willingness to be flexible, in response, other states would not offer them concessions to the same degree. This is consistent with many IR analysis and rational choices arguments that demonstrate that fulfilling one’s own interests and “winning” as much as possible is an important

⁶⁹ For example, see (Druckman 1994; Dür and González 2007).

goal of bargaining (e.g., Schelling 1960; Grieco 1993; Hopmann 1995: 29-30). Thus, the finding that states are likely to be slightly less cooperative than the *most* cooperative of states makes intuitive sense.

This is also largely consistent with the simplified, abstract model presented in Chapter 3 which shows that the best response to a strategy in which the other player offers concessions on all issues is to offer no concessions in return, while the best response to a strategy in which the other player offers a lesser degree of concessions is to offer some concessions in return. Thus the most extreme cooperative bargaining strategy results in a less cooperative bargaining strategy in return, while mostly cooperative strategies result in mostly cooperative strategies in return.

However, to make sure that this interpretation is accurate, and the negative relationship does not indicate a lack of reciprocity in the bargaining interactions being considered (an important component in the theoretical argument) the models were also run without the inclusion of the main independent variable. When this was done, the relationship between the strategies adopted by other states and a given state's cooperative bargaining becomes positive and statistically significant. This supports the argument made here, and demonstrates that the negative impact of others' strategies reported in Table 6.2 does not indicate that reciprocity is absent. In the cases analyzed here, when others adopt more cooperative strategies, any given state adopts more cooperative strategies as well. Thus, reciprocity is present.

However, the fact that all states together adopt more cooperative strategies (or all together adopt less cooperative strategies) is explained theoretically by this project through the impact of the distributional patterns of the issue structure. Empirically, this variable also explains this general variance in bargaining strategies, as evidenced by its statistically significant effect reported in Table 6.2. That all states together are more cooperative or less cooperative,

and thus demonstrate reciprocal tendencies, is therefore explained by the effect of offsetting distributional patterns.

Given the variance in bargaining strategies already explained by offsetting distributional patterns, the remaining variance is the variance across state bargaining strategies which are clustered at the more cooperative end of the spectrum of the dependent variable (or less cooperative end, depending on the offsetting distributional patterns). Given this remaining variance, the negative relationship between the strategies of others and the cooperative nature of a given state's strategy is therefore not surprising, nor does it undermine the logic of the argument made here.

6.6.3 Statistical Results: State Characteristics

An interesting finding of the models presented above is that, aside from the power of a state, the variables related to state characteristics do not exert strong or statistically significant effects on cooperative bargaining. Providing support for institutionalist arguments, the variables that exert a statistically significant impact on the cooperative nature of state bargaining strategies are, rather, those related to the structure of the bargaining interaction – i.e., the variables related to the bargaining “game” being played. The main explanatory variables are the offsetting distributional patterns and the strategies adopted by the other states, as well as the variables related to the particular characteristics of a given bargain.

The weak impact of the state characteristic variables may be explained by two possible factors. First, it may be that the power of the state is the central state characteristic which explains variation in its bargaining strategies. Second, it may be partly due to the relatively small number of bargains examined here. It may be that Scandinavian countries and the new

member states exert general trends in their bargaining strategies across all bargaining in the EU that is simply not picked up by these cases. However, in the bargains examined here, it is the variables related to the structure of the bargaining interaction that largely explain the bargaining strategies that EU member states adopt.

6.6.4 Statistical Results: Different Measures of ODPs

In addition, a comparison of Models 1 and 2 with Models 3 and 4 suggests that analyzing issue linkage in terms of the issues being offsetting or not – i.e., dichotomizing this variable – better predicts the variation in bargaining strategies. This is evidenced by the differences in the proportional reduction in error for these two sets of models. In particular, Model 3 predicts about 94% of the cases correctly – a substantial amount. Yet even Models 1 and 2 significantly improve the prediction of the bargaining strategy and, therefore, are also important measures to consider. Across all of the models and, therefore, both types of measurement of offsetting distributional patterns, the predictions of the theoretical argument hold.

6.7 SUBSTANTIVE EFFECTS (NO INTERACTION)

Table 6.2 and the analysis above provides important empirical support for the theory presented here, demonstrating that more offsetting distributional patterns in a bargaining structure exert a positive and statistically significant effect on the degree to which a state's bargaining strategy will be “cooperative” in nature. It is also important, however, to assess the substantive significance of this effect.

Table 6.3 below reports predicted probabilities derived from Model 1 in the statistical analysis. This model was chosen because the 12-category dependent variable best captures the definition of cooperative bargaining, and the theoretical argument was phrased in terms of the *degree* to which distributional patterns are offsetting.

The first row in the table presents the probability that the dependent variable (i.e., cooperative bargaining) will have a particular value when all independent variables are at their mean.⁷⁰ For example, when all the independent variables are at their mean, the probability of a state adopting a largely non-cooperative bargaining strategy (i.e., that the dependent variable is less than its median value, 6) is 42.2%; the probability of a state adopting a largely cooperative bargaining strategy (i.e., that the dependent variable is greater than its median value, 6) is about 29.6%; the probability of a state adopting a “middle-of-the-road” strategy (i.e., that the dependent variable equals its median value, 6) is about 27.8%.

⁷⁰ Note that the mean value of the measure of offsetting distributional patterns is .012, very close to the theoretical mean of 0, which would imply a situation in which one point exists in the bargaining space – the point at which the bottom lines of the actors overlap.

Table 6.3. Predicted Probabilities from Model 1

	Probability DV=0	Probability DV<6	Probability DV=6	Probability DV>6	Probability DV=11
All variables at mean	.022 (.011)	.422 (.098)	.278 (.046)	.296 (.078)	.022 (.010)
ODP increased by 1 standard deviation	.002 (.002)	.059 (.050)	.101 (.056)	.835 (.332)	.258 (.143)
ODP decreased by 1 standard deviation	.261 (.145)	.894 (.377)	.066 (.046)	.035 (.033)	.002 (.002)
ODP and others_strategies increased by 1 standard deviation	.008 (.005)	.207 (.070)	.245 (.045)	.543 (.148)	.061 (.030)
ODP and others_strategies decreased by 1 standard deviation	.062 (.031)	.679 (.170)	.189 (.039)	.127 (.047)	.008 (.004)

*Standard errors are in parentheses

Following the predictions of the theory, when the distributional pattern is more offsetting, the probability of more cooperative bargaining (the probability that the cooperative bargaining variable takes on larger values, treated here as values greater than the median, 6) should increase while the probability of less cooperative bargaining (the probability that cooperative bargaining variable takes on smaller values, treated here as values less than the median, 6) should decrease. The findings presented in Table 6.3 are consistent with these expectations.⁷¹

6.7.1 Varying Offsetting Distributional Patterns

First, when all other variables are held at their mean and the degree to which the distributional patterns are offsetting (ODP) is *increased* by one standard deviation from its mean, the probability of more cooperative bargaining increases from 29.6% to 83.5%, making more cooperative bargaining over two and a half times as likely. The probability of less cooperative

⁷¹ For ease of presentation, all substantive results that follow in this discussion are statistically significant at the .05 level. Any results not statistically significant at this level are described as “not statistically different from 0”.

bargaining, on the other hand, decreases from 42.2% to a probability not statistically different from 0.⁷²

Second, when all other variables are held at their mean and the degree to which the distributional pattern is offsetting (ODP) is *decreased* from its mean by one standard deviation, the probability of more cooperative bargaining decreases from a statistically significant 29.6% to a probability not statistically different from 0, while the probability of less cooperative bargaining increases from 42.2% to 89.4%. At this low degree of offsetting distributional patterns, less cooperative bargaining strategies are over two times as likely as when these patterns are at their mean level.

6.7.2 Varying Offsetting Distributional Patterns *and* Others' Strategies

These results, however, do not take into account that not only do more offsetting distributional patterns make cooperative bargaining more likely for a given state, but that these ODPs also make *other* states' bargaining strategies more cooperative overall. Given that increasing the degree to which other states' strategies are cooperative makes a state *less likely* to adopt a cooperative strategy, it needs to be demonstrated that the substantive significance of the effects of more offsetting distributional patterns holds *even when* others strategies become more cooperative. While the results in Table 6.3 do show that the substantive effect of offsetting distributional patterns on cooperative bargaining is reduced when this is taken into account (as would be expected), increasing the degree of offsetting distributional patterns still significantly increases the probability of states adopting cooperative bargaining strategies.

⁷² The most cooperative (DV=11) and least cooperative (DV=0) strategies follow a similar pattern.

When offsetting distributional patterns are *increased* from their mean by one standard deviation, the positive and statistically significant effect of the *others' strategies* variable indicates that the other states' strategies will be increased as well. Taking this into account and also increasing others' strategies by one standard deviation⁷³ (while all other variables are held at their mean), the probability of more cooperative bargaining increases from 29.6% to 54.3% - making more cooperative bargaining almost twice as likely to be adopted by a given state. The probability of less cooperative bargaining, on the other hand, decreases from 42.2% to 20.7% - making less cooperative bargaining 50% less likely to be adopted by a given state.⁷⁴

Conversely, when offsetting distributional patterns and others' strategies are each *decreased* from their mean by one standard deviation (and all other variables are held constant at their mean), the probability a state will adopt more cooperative bargaining decreases from 29.6% to 12.7% - making more cooperative bargaining more than 50% less likely to be adopted by a given state. The probability of less cooperative bargaining, on the other hand, increases from 42.2% to 67.9% - making less cooperative bargaining more than 50% more likely to be adopted by a state. The effects, while smaller, are still substantively significant.⁷⁰

6.8 STATISTICAL MODEL WITH INTERACTION TERM

The model formations above provide an important first step in the test of the central hypothesis posited here. However, because it does not take into account the fact that it is the *interaction* of the structure of the bargaining game and the strategies adopted by the other states that impact a

⁷³ Although a one standard deviation increase in ODP does not *necessarily* result in a one standard deviation change in others' strategies, this analysis should be sufficient for exploratory purposes.

⁷⁴ The most cooperative (DV=11) and least cooperative (DV=0) strategies follow a similar pattern.

states' choice of bargaining strategy, these models are incomplete. Therefore, models were also run with the inclusion of the *interaction* of these two factors to check the robustness of the results reported above, and to ensure that the effect is not a result of biased parameter estimates resulting from omitted variable bias – the exclusion of relevant variables from the statistical model.

Table 6.4 presents the results from three of these models below. All three models reported here use the 12-category measure of cooperative bargaining. In addition, they all report the ODP with the distance measure, D1, and Model 5 uses the linked give measure G1; Model 6 uses the G2 measure; Model 7 uses the G3 measure. The results reported for these models are statistically and substantively consistent across all nine measures of offsetting distributional patterns. The results of these additional models are reported in Appendix C.⁷⁵

⁷⁵ It should be noted that models using the dichotomous ODP measures and/or the 6-category measure of cooperative bargaining could not reach convergence. This is because with the inclusion of the interaction term, these sets of models were perfectly (or almost perfectly) predicting the dependent variable. Therefore, while the results reported here provide some indication of the importance of this interactive effect, gathering additional data on which to test this further is necessary.

Table 6.4. Statistical Output: ODPs and Cooperative Bargaining (Interaction Included)

	Model 5 ODP D1/G1	Model 6 ODP D1/G2	Model 7 ODP D1/G3
Offsetting Distributional Pattern	-309.898** (37.948)	-351.355** (43.406)	-305.683** (37.837)
Others' strategies	-70.681** (8.237)	-64.157** (7.609)	-73.688** (8.672)
ODP*Others' strategies Interaction	196.706** (23.017)	189.774** (22.595)	195.911** (23.158)
Lagged DV	.306* (.148)	.267 (.137)	.271 (.145)
Voting Weight	-.059* (.028)	-.056* (.027)	-.056* (.028)
QMV	132.227** (15.370)	82.794** (9.776)	108.702** (12.754)
Publicity	-93.637** (10.910)	-46.582** (5.539)	-64.415** (7.590)
Scandinavian	.019 (.916)	.153 (.849)	.113 (.898)
Euro	-.215 (.811)	-.116 (.762)	-.140 (.794)
New MS	-.801 (.946)	-.565 (.892)	-.624 (.928)
N	129	129	129
pseudo R²	.616	.562	.604
Log likelihood	-96.829	-110.246	-99.655
Chi² (prob>chi²)	310.76 (.000)	283.93 (.000)	305.11 (.000)
PRE (Modal %)	83.52% (22.48%)	80.15% (22.48%)	83.52% (22.48%)
* represents statistical significance at the .05 level			
** represents statistical significance at the .01 level			

6.8.1 Statistical Results: Main Findings

At first glance, the negative and statistically significant parameter estimate for the ODP variable appears to contradict the hypothesized effect of offsetting distributional patterns on cooperative bargaining. However, because ODP is a component of the interaction term, its *true* effect is not captured by its parameter estimate alone, but rather by a combination of the component estimate and interaction estimate, and is dependent on the value of the other states' strategies. In particular, the component estimate alone only demonstrates the impact of ODP on cooperative bargaining when the other states' strategies take on a value of zero – a value that does not exist in the dataset and is therefore empirically meaningless.

Taking into account this important interactive effect that is built into the analysis, Figure 6.1 demonstrates the effect of ODP on cooperative bargaining at all empirically-occurring values of the other states' strategies. The effect illustrated in this Figure is based on the statistical results reported in Model 5. However, these findings are consistent across all formulations of this model, as reported in Appendix C.

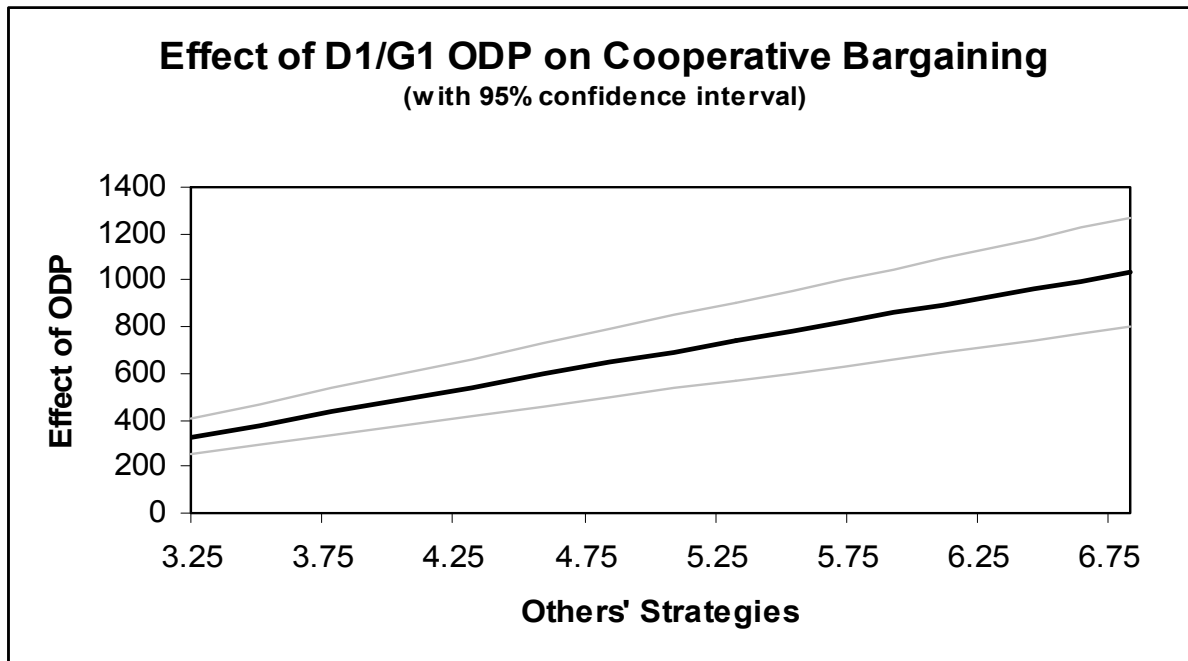


Figure 6.1. Effects of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies

Figure 6.1 shows the impact of offsetting distributional patterns on cooperative bargaining and the 95% confidence interval. As this figure demonstrates, the effect of offsetting distributional patterns is *always* positive and statistically significant at the .05 level of significance for all empirically-occurring values of the strategies adopted by the other states.⁷⁶ This therefore provides additional evidence in support of the central hypothesis. Even when the interactive effect of ODP and the strategies of other states is taken into account and controlled for, offsetting distributional patterns *alone* are found to exert a positive and statistically significant effect on the cooperative nature of member states' bargaining strategies.

Furthermore, the additional findings discussed above are further supported here. The greater the power of the member state (i.e., the more voting weight they have) the less

⁷⁶ This is not only significant at the .05 level of significance, but is always significant at the .01 level.

cooperative they are likely to be, holding all else constant. Member states are also more cooperative when the decision-rule is QMV rather than unanimity and less cooperative when the bargain is highly politicized and publicized. Therefore, in addition to providing a more theoretically accurate test, these results serve to demonstrate the robustness of the results.

6.9 SUBSTANTIVE EFFECTS WITH INTERACTION

In addition to exerting a positive and statistically significant effect, the impact of offsetting distributional patterns is also substantively significant. Table 6.5 below presents the predicted probabilities that a state's strategy will reflect certain degrees of cooperation (i.e., the dependent variable will take on particular values), given different values of the central independent variables.

Table 6.5. Predicted Probabilities from Model 5 (with interaction)

	Probability DV=0	Probability DV<6	Probability DV=6	Probability DV>6	Probability DV=11
All variables at mean	.000 (.000)	.463 (.130)	.515 (.120)	.022 (.013)	.000 (.000)
ODP increased by 1 standard deviation	.000 (.000)	.000 (.000)	.000 (.000)	1.000 (.000)	1.000 (.000)
ODP decreased by 1 standard deviation	1.000 (.000)	1.000 (.000)	.000 (.000)	.000 (.000)	.000 (.000)
ODP and others_strategies increased by 1 standard deviation	.000 (.000)	.000 (.000)	.000 (.000)	1.000 (.007)	.998 (.003)
ODP and others_strategies decreased by 1 standard deviation	.001 (.002)	1.000 (.440)	.000 (.000)	.000 (.000)	.000 (.000)

*Standard errors are in parentheses

The first row in the table presents the probability that the dependent variable (i.e., cooperative bargaining) will have a particular value when all independent variables are at their mean. For example, when all the independent variables are at their mean, the probability of a state adopting a largely non-cooperative bargaining strategy (i.e., that the dependent variable is less than its median value, 6) is approximately 46%; the probability of a state adopting a largely cooperative bargaining strategy (i.e., that the dependent variable is greater than its median value, 6) is about 2%; the probability of a state adopting a “middle-of-the-road” strategy (i.e., that the dependent variable equals its median value, 6) is 51.5%. Thus, the first row of data can serve as a base-line against which the probabilities of cooperative bargaining at different values of offsetting distributional patterns can be compared, and shows that, in general, states are largely unlikely to adopt cooperative bargaining strategies.

6.9.1 Varying Offsetting Distributional Patterns

The second and third rows in Table 6.5 show the probability of different types of state bargaining strategies when the distributional patterns of the issues are more or less offsetting than the mean value.⁷⁷ When the distributional patterns are more offsetting (i.e., increased by one standard deviation), the probability of cooperative bargaining increases to roughly 100%. When the distributional patterns are less offsetting (i.e., decreased by one standard deviation), the probability of *non*-cooperative bargaining increases to roughly 100%. Thus, the effect of

⁷⁷ The calculations carried out here take into account the fact that the ODP effect is both in the component value and the interaction term. Thus, when ODP is increased by one standard deviation, not only is ODP increased, but the mean value of others strategies is multiplied by this new ODP value to calculate the value of the interaction term. For the second row, ODP (increased by one standard deviation) equals 0.164 and, therefore, the interaction term equals this new value multiplied by the mean of others' strategies (5.333), or 0.874. For the third row, ODP equals -0.14 and the interaction equals -0.746.

offsetting distributional patterns on the cooperative nature of state bargaining strategies is substantively very large.

The last two rows in Table 6.5 again take into account the fact that offsetting distributional patterns will not only impact a given state's bargaining strategy, but also the strategies of the other states. Given the negative and statistically significant impact of the strategies adopted by other states on a given states' bargaining strategy, it is important to assess whether the substantive effect of offsetting distributional patterns on state bargaining strategies holds, taking this into account.⁷⁸ As Table 6.5 shows, even when controlling for this important factor, when the distributional patterns are more offsetting and the strategies of other states are more cooperative, the probability a given state will adopt a more cooperative bargaining strategy is roughly 100%; when the distributional patterns are less offsetting and the strategies of other states are less cooperative, the probability a given state will adopt a *non-cooperative* bargaining strategy is roughly 100%.

These substantive results provide strong empirical support to back up the predictions of the theory presented here. The more offsetting are the distributional pattern of issues over which member states bargain, the more likely they are to adopt cooperative bargaining strategies. This effect is shown to be not only statistically significant, but also substantively significant.

⁷⁸ Again, these calculations take into account that not only the components will change, but the interaction term's value will change as well. Thus, when both variables are increased by one standard deviation, these new values are also multiplied together to calculate the new value of the interaction term. In the fourth row, ODP (increased by one standard deviation) equals 0.164 and others' strategies (increased by one standard deviation) equals 6.736. The interaction term therefore equals 1.104. In the final row, ODP equals -.014, others' strategies equals 3.93 and the interaction therefore equals -0.550.

6.10 MODEL COMPARISON

Before concluding, it is important to note the explanatory power of the various models presented here. In particular, the proportional reduction in error (PRE) statistic, reported in Table 6.2 and Table 6.4 indicates “how much better” the statistical model does at predicting a state’s bargaining strategy when compared with how well a state’s strategy could be predicted simply by guessing the modal category.⁷⁹ Model 1, which uses the continuous measures of ODP and does not take into account the interaction term, correctly categorizes about 37.58% of cases into the 12-category dependent variable (reducing the error in prediction from simply guessing the mode by 19.48%). When this Model is modified to take into account the interactive effect of ODP and the strategies adopted by other states, it then correctly categorizes about 87.22% of cases (reducing the error in prediction by 83.52%).

The statistical and substantive findings that are related to the effect of offsetting distributional patterns on the cooperative nature of states’ bargaining strategies (the focus of the theoretical argument here) are not impacted by the model specification, as laid out by the statistical and substantive findings presented above. However, the overall ability of the model to explain the variance in states’ choices of bargaining strategies is highly impacted by the inclusion of the interaction term. Future studies interested in more fully explaining the conditions under which states will adopt different types of bargaining strategies will therefore need to take this interactive effect into account.

⁷⁹ For DV1, the modal category is 4, capturing 22.48% of the cases. For DV2 the modal category is 4, capturing 47.29% of the cases.

6.11 CONCLUSION

These findings provide not only statistical, but also substantive, support for the theory posited in the dissertation. For the EU cases examined, when the institutional bargaining structure is characterized by issue structures with more offsetting distributional patterns, member states are more likely to adopt cooperative bargaining strategies. While not tested, there is no theoretical reason to suspect that the same relationship would not hold for other EU cases and for interstate bargaining, more generally.

Having said this, however, it should be noted that the preceding analysis has tested the correlation between offsetting distributional patterns and cooperative bargaining. It has not explained whether the hypothesized causal mechanisms underlying this relationship actually account for it. The chapters that follow examine EU negotiations in-depth, highlighting these causal mechanisms at work.

7.0 THE BATTERY DIRECTIVE

The negotiations over the Proposal for a Directive on Batteries and Accumulators and Spent Batteries and Accumulators (2003/282 COD), hereafter referred to as the “Battery Directive,” provides an important first case in which to analyze this theory. First, this case represents an “everyday” type of decision agreed upon by the member states in the EU. It is therefore an important case to include because its un-politicized, more technical nature is representative of a large number of decisions that are taken by the EU. In addition, its relatively simple negotiation process allows for a demonstration of the theoretical argument at work in a real-world case of bargaining. The cases which follow in Chapter 8 and 9 will analyze more politically interesting and complex negotiations, and can be compared to this baseline case for additional analysis and demonstration of the theoretical argument.

It should be noted that, to protect the confidentiality of the non-publicized positions of the member states, the figures in all the case studies are coded using randomly assigned labels in place of member state names. Appendix D provides general characteristics of the states assigned particular labels. To the extent possible, actual positions of the member states are discussed in the text of the cases.

7.1 BACKGROUND OF BATTERY DIRECTIVE

One of the key areas in which the EU legislates is the area of environmental policy. The environmental issue area is important not only at the EU level, but it is also a central area of concern to a number of its member states – the Scandinavian countries, in particular. The Battery Directive, on which an agreement was reached among the member states in 2005, represents one dossier in this broad issue area. While all negotiations over EU legislation are different, an analysis of this case allows for a deeper understanding of the EU decision-making process and the types of arguments and negotiations that are encountered in constructing “everyday” legislation across the member states of the EU. In addition, agreement was reached among the member states shortly after the accession of ten Central and Eastern European member states, and it therefore also illustrates a case in which these new member states impacted and weighed in on the negotiations.

7.1.1 Factors Driving the Directive

As described by the Commission in presenting their proposal, the main objectives of this directive were set by the Sixth Community Environment Action Programme as well as Directive 2002/96/EC on waste electrical and electronic equipment which called for the need to revise the current EU legislation on batteries and accumulators (Directive 91/157/EEC) “as soon as possible.” The main focus of these objectives was the adoption of “environmentally sound waste management practices with regards to batteries and accumulators.” In other words, the goal was to prevent these hazardous materials from entering the waste stream. In line with this objective, the Commission carried out an Extended Impact Assessment to evaluate the economic and

environmental costs and benefits of different policy options in an attempt to identify the “most sustainable” policies to be incorporated in a new proposal (2003/282 COD).

Based on these objectives and the Extended Impact Assessment they carried out, the European Commission put forward a proposal in November 2003 for a co-decision agreement by the Council of Ministers and European Parliament (2003/723 COM). To harmonize member states’ approaches to this issue and prevent the hazardous materials from entering the waste stream, two measures were discussed: a ban on batteries that contain nickel-cadmium and the collection and recycling of other types of batteries and accumulators by the member states.

While battery collection and recycling at the state level is likely a foreign concept for many citizens in the United States, it was a type of recycling program that had already been laid out to some degree in Directive 91/157/EEC. In line with this, several of the member states of the EU already had in place highly efficient systems for the collection and recycling of batteries – including Belgium, France, the Netherlands, and the Scandinavian countries. In addition, a ban on nickel-cadmium batteries had already been instituted by several member states. The Commission’s proposal therefore reflected these precedents.

7.2 BATTERY DIRECTIVE: CONSTANCY OF BARGAINING SPACE

Before the distributional patterns of the key issues in the negotiation can be assessed, it is important to note that the evaluation of the degree to which they are offsetting, as laid out in Chapter 5, depends on the measurement of the bargaining space. Demonstrating that the bargaining space was not impacted by other factors and that it remained largely constant across the negotiations is an important facet of this case analysis. As discussed in the coding rules laid

out in Chapter 5, the size of the bargaining space is impacted by two main factors – the issues over which the states bargain and the interests of the bargaining states in relation to those issues. In-depth interview evidence obtained from member state representatives and other EU officials involved in this bargaining process demonstrate that these two factors remained largely constant across the negotiations on the Battery Directive.

The key issues were set by the proposal presented by the Commission in November 2003: a restriction on the use of cadmium in batteries and the rates of collection of waste batteries to be met by member states. These issues remained the main issues of contention up until political agreement was reached among the member states in July 2005. Thus, the main issues which structured the bargaining among the member states remained constant across the negotiations.

In addition, the positions and interests of the member states in approaching these issues also remained constant. Over the course of the negotiations, no member state had a change of government or Environmental Minister that served to alter their positions and interests on the issues on this directive. Member states that were concerned about their industry retained this concern throughout the negotiations; member states that desired an environmentally-strong directive did not change this approach. Therefore, the bargaining space remained relatively constant and was not impacted by outside factors. Analyzing the average bargaining space can therefore be used as a way to capture the degree to which the distributional patterns of the key issues in this negotiation were offsetting.

7.3 BATTERY DIRECTIVE: DISTRIBUTIONAL PATTERNS OF KEY ISSUES

In the identification of the key issues, it is important to note that legislation such as the Battery Directive has many technical issues that are negotiated and considered. For this directive, these technical issues included the legal basis of the directive, the definition of a “producer” of batteries, when it is appropriate to use the term “battery” and when it is appropriate to use the term “accumulator,” the definition of an “appliance,” and many other such non-political issues. These types of issues were largely resolved by member state representatives at the Working Group level working with experts in this area. Only those issues that were raised to the “political” level for discussion – i.e., to the COREPER or Council of Ministers level – are considered the key issues in the negotiation. The negotiations that are analyzed here are those that took place largely at the COREPER level, and thus this definition of the key issues is consistent with the negotiations as they are analyzed by this project.

The key issues of contention in these negotiations were laid out in Article 4, which called for a limitation on the use of cadmium batteries, and Article 13, which laid out collection targets for the member states. The following section will discuss the relative exogeneity of this issue structure to the interactions among the member states. The sections after that will then analyze the offsetting distributional patterns of these key issues and the bargaining interaction over those issues.

7.3.1 Battery Directive: Relative Exogeneity of Issue Structure

An important feature of the issues presented by the Commission proposal is that they were largely a result of the Commission’s interests and internal politics. The sources of this issue

structure were the interests of DG Environment – the administrative arm in charge of proposing and overseeing EU legislation in this field – as well as the internal political struggles within the Commission between DG Environment and DG Industry, rather than the bargaining interaction or expectation of the bargaining interaction among the member states.

Before the proposal was presented in 2003, the Battery Directive had a history of political struggle within the Commission. “At the time, we had a Swedish Commissioner [in DG Environment], and she had said that she would like to restrict the use of cadmium in batteries. That was for her quite an important point. At the time we already had an existing battery directive of 1991, which restricted the use of mercury in batteries. So basically what our Environmental Commissioner at the time wanted to do was to basically include cadmium in the list of prohibited substances – more or less” (Interview with Commission official 2006).

However, there was opposition to this from DG Industry. Rather than prohibiting the substance, DG Industry, “wanted to see other policy measures [adopted] to manage the risk” (Interview with Commission official 2006). So in 2003, when the proposal emerged from the Commission, rather than a full or limited ban, it proposed what was called a closed-loop system. The closed-loop system basically obliged member states to have very high battery collection and recycling targets. This would ensure that cadmium and other battery chemicals did not end up in the waste stream. All batteries – including cadmium batteries, most particularly – were to be collected by the government. In practice, this would place a significant administrative burden on the member states to monitor and regulate the batteries discharged in the waste stream.

Member states were uniformly against this closed loop system (Interview with Commission official 2006). However, despite this opposition to, and ultimately the removal of the closed loop system itself, this proposal served to structure the bargaining among the member

states. In particular, the closed loop system that was proposed by the Commission laid out two main issues. Even with the removal of the closed loop system itself, these were issues that had to be dealt with by the member states: (1) the collection and recycling of batteries, and (2) restrictions on the use of cadmium in batteries.

Thus, the Commission proposal and the main issues that it laid out arose directly from the interests of the Commissioner heading DG Environment and the internal politics and negotiations within the Commission. These issues can thus be treated as largely exogenous to the member state bargaining interactions that followed. The sections which follow analyze this issue structure more closely in order to analyze the degree to which the distributional patterns of these issues set by the Commission proposal were offsetting.

7.3.2 Battery Directive: Positions and Linked Give on Cadmium Restriction Issues

In the coding of the positions and linked give of the member states for the Battery Directive, it is important to point out that working papers which document these positions and linked give have been made public. In particular, Document 14228/2/04 REV 2 is publicly available. In addition to working documents, in-depth interviews conducted from 2005 to 2007 with member state representatives and other EU officials who participated in these negotiations are used in the coding and discussion that follows.⁸⁰

The first central issue under negotiation was restrictions on the use of cadmium in batteries. On one side, a large coalition of member states (including states such as Belgium,

⁸⁰ These interviews were used to supplement the publicly available information. The discussion does not use member state labels in order to prevent revealing any highly sensitive information that was not made public, protecting the confidentiality with which the interviews were conducted.

Denmark, Spain, Cyprus, the Netherlands, Austria, Slovenia, Finland and Sweden) supported a ban on the production of cadmium batteries. Though most of these states preferred a full ban on cadmium, they were willing to accept a partial ban. They thus had a “medium” degree of linked give on this issue.

On the other side, several member states either: (1) opposed outright a ban or partial ban of cadmium, (2) opposed the ban due to the lack of what they saw as sustainable alternatives to nickel-cadmium (NiCad) batteries, or (3) took a principled opposition to banning any type of technology including the use of cadmium in batteries. Member states on this side of the negotiations included France, Poland, the United Kingdom, the Czech Republic, Germany, Ireland, Italy, Portugal and Slovakia.⁸¹ France, in particular, has a battery manufacturer, SAFT, that produces NiCad batteries.⁸² The central interest of France in these negotiations was a desire to protect that plant from being forced to close, and its workers from losing their jobs.

Finally, several member states were largely “in the middle” on this issue. These positions are laid out in Figure 7.1 below.

⁸¹ For evidence of the particularly strong opposition from France and the United Kingdom see (EurActiv Network 2004b).

⁸² See (McDowall 2002) for the position of SAFT regarding a ban on cadmium.

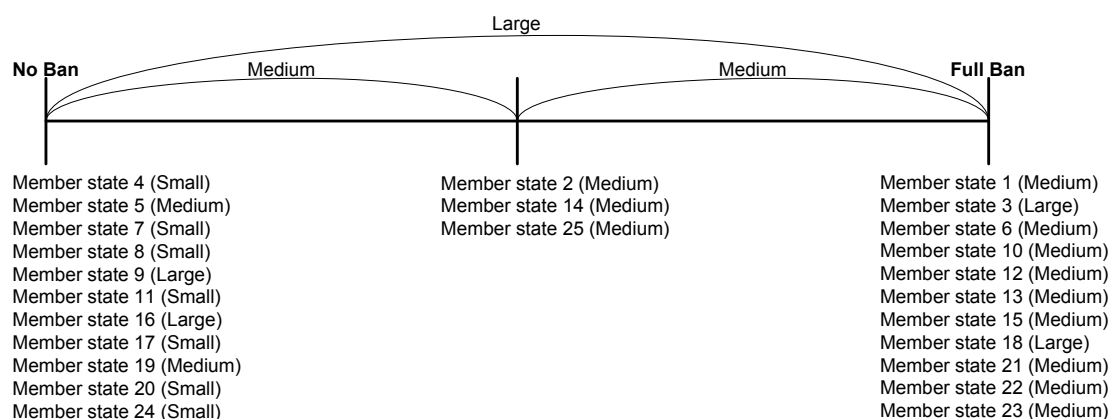


Figure 7.1. Issue Space: Restrictions on Use of Cadmium in Batteries

A second issue related to the ban on cadmium in batteries also proved important – the timing of the phase-out of cadmium associated with a ban or partial ban. Those states that were concerned primarily with the lack of sustainable alternatives to NiCad batteries supported a long phase-out period, with the expectation that a sustainable alternative would likely be found in the longer time-frame allotted (Interviews 2006). Given the link to this timing issue, the linked give of these states on the ban issue, itself, was large.

However, for those member states that opposed the ban either based on principle or based on concerns for cadmium producers within their national territory, the issue of the phase-out of the ban was irrelevant to their opposition to the ban itself. These member states therefore had a very small linked give on the cadmium ban, and were largely indifferent to the length of time allotted for the phase-out of cadmium.

Member states that desired a full ban on cadmium preferred that the ban be instituted sooner rather than later, and thus preferred a short phase-out period for these batteries. However, the most important issue for them was the ban itself, and being able to show to their constituencies that they pushed for and “won” a ban at the EU level. They therefore had a large

degree of linked give on the timing issue. These positions and linked give are laid out in Figure 7.2 below.

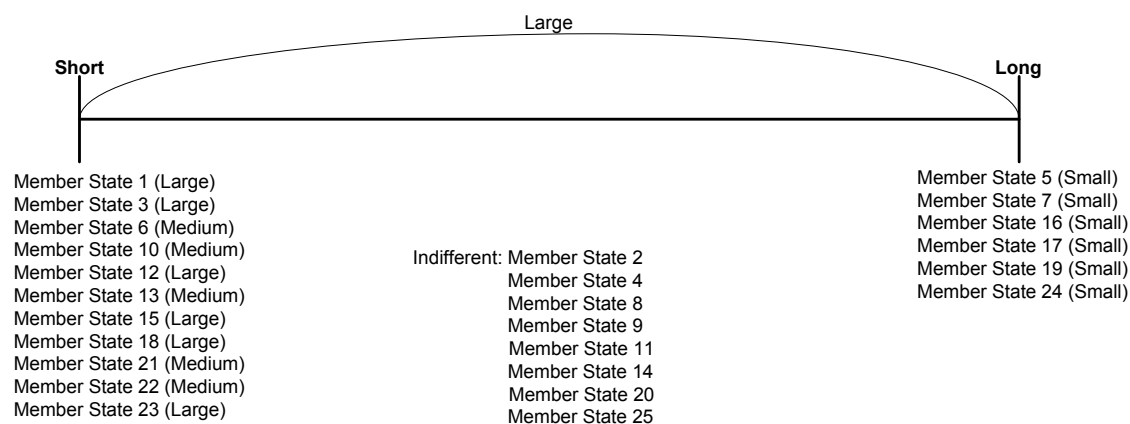


Figure 7.2. Issue Space: Time to Implementation of Cadmium Restrictions

7.3.3 Battery Directive: Positions and Linked Give on Battery Collection Issues

The second central issue of debate in these negotiations involved the collection and recycling of batteries. Several member states already had national systems in place for the collection and recycling of batteries and were collecting batteries at a fairly high rate. Other member states either had a largely ineffective collection system, or no system at all, in place.

The Scandinavian countries, the Netherlands, Belgium, and France – member states that were already collecting spent batteries at a high rate – supported an EU-wide requirement for a high rate of battery collection in this directive. This position stemmed from several factors. First, a high battery collection requirement at the EU level would not place any additional burden on their national administration, as the infrastructure necessary to carry this out was already in place. It was therefore not costly for them to have such an EU-wide requirement. Second, the

existence of high standards at the national level, while at the same time not achieving such standards at the EU level, could raise criticisms of the government on the domestic front. In particular, criticisms could be aimed at the government’s imposition of a high battery collection requirement that is not required by other member states – i.e., the “lack of a level playing field” (Interview with Environment Working Group representative 2006) – and/or criticisms of the government’s ineffectiveness in achieving national goals at the EU level (Interviews 2006).

In contrast, member states that did not have effective collection systems in place desired collection targets that were “as low as possible.” The main interests here were the costs at stake in the need to implement effective collection schemes, as well as possible costs or criticisms that might arise from their inability to meet the requirements. Again, several member states fell “in the middle” on this issue. These positions are laid out in Figure 7.3 below.

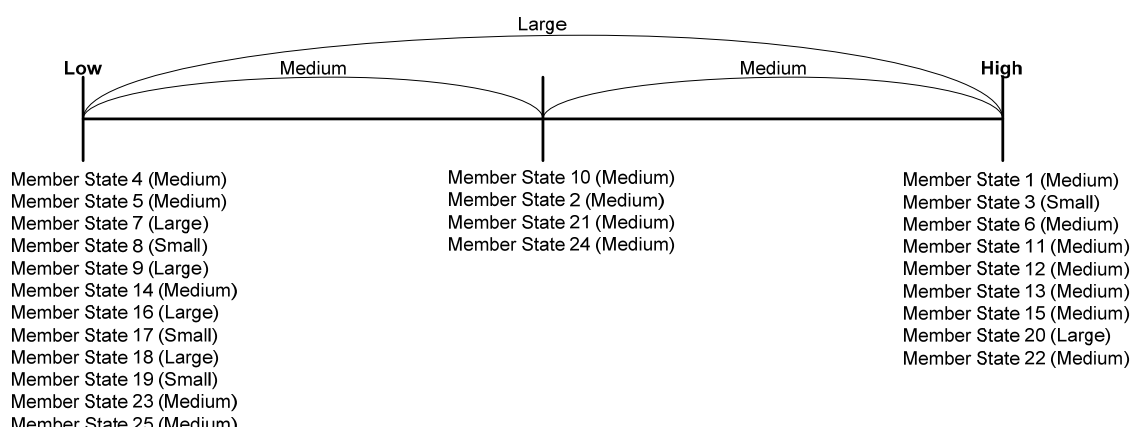


Figure 7.3. Issue Space: Battery Collection Target Rates

The main opposition to high recycling targets stemmed from member state concerns about the feasibility of achieving these high targets. This was especially a concern for member states that did not have in place any system for the collection of batteries at the national level, or

whose current system was not effective. In addition to desiring low targets, they therefore also preferred to have as long as possible to implement those targets, so as to have enough time to institute effective battery collection systems at the national level. The key concern of these member states on the battery collection issues was that they would not be able to meet the targets on time, and the fear of possible infringement procedure from the European Commission that might result because of their failure to carry out the obligations laid out in this directive (Interviews 2006). Their flexibility on the time issue was therefore very narrow (i.e., they had a small linked give on the issue of time), while they were willing to be at least somewhat more flexible on the issue of the rates themselves.

In addition, because costs associated with collection and recycling (including such things as correct labeling) would be placed on manufacturers, states representing these industries also opposed high collection rates. Furthermore, states such as Greece had somewhat different interests at stake on these issues. In particular, they did not believe that more time would allow them to fulfill these high requirements. In particular, Greece cited particular factors such as a highly dispersed population, many islands, and large seasonal fluctuations in population that would make the collection of batteries extremely difficult and extremely costly. Despite a longer amount of time, these factors would still impede their ability to collect a large percentage of spent batteries. Member states with difficulties such as these, as well as those most concerned with protecting their manufacturers, were therefore not concerned with the time issue, and had a small linked give on the collection rate itself.

Finally, member states that preferred a high collection rate did so for environmental as well as symbolic reasons, as discussed above with regards to the cadmium ban. They wanted to show to their constituency that they achieved rates similar to their own national legislation at the

EU level. These member states were therefore flexible on the time issue, but less flexible on the collection rate itself. These positions and linked give are illustrated in Figure 7.4 below.

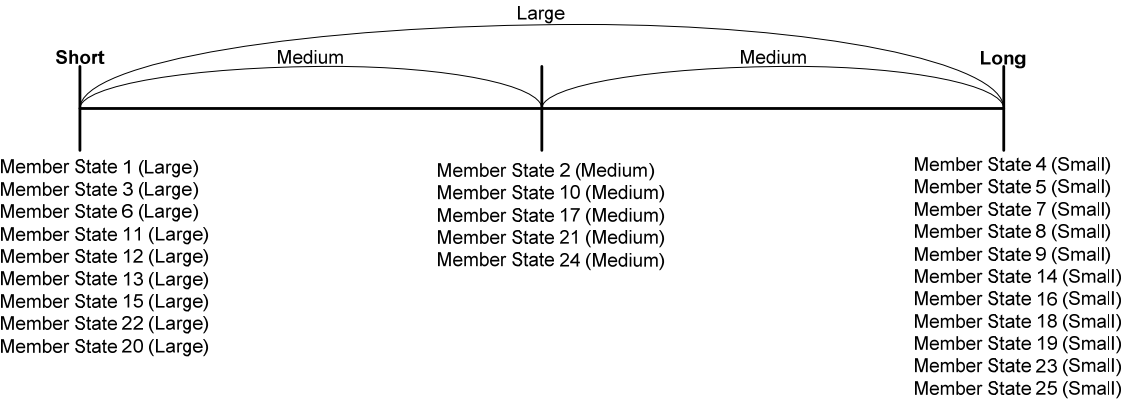


Figure 7.4. Issue Space: Time to Reach Battery Collection Targets

7.3.4 Battery Directive: Offsetting Distributional Patterns

Using the coding rules laid out in Chapter 5, the member states’ positions and linked give on these four issues demonstrate that the key issues in the Battery Directive had distributional patterns that were largely offsetting.⁸³ This coding is supported by the potential trade-offs available across these issues, as highlighted by the interview evidence. For the states that supported the achievement of, at the very least, symbolic restrictions on cadmium, the ban was the most important issue. For the majority of member states that opposed it, the time to phase out cadmium, or the protection of their industry was the most important issue. Similarly, for

⁸³ The nine measures of offsetting distributional patterns are valued as follows: D1/G1 = 0.055; D1/G2 = 0.104; D1/G3 = 0.097; D2/G1 = 0.055; D2/G2 = 0.104; D2/G3 = 0.097; D3/G1 = 0.055; D3/G2 = 0.104; D3/G3 = 0.097.

states that supported high collection rates, the target rates themselves were the most important issue, while for the majority of states that preferred low targets, the time to reach the targets was the most important. Thus, consistent with the definition of offsetting distributional patterns, for the most part, member states in opposing coalitions had a large interest in winning on opposite issues. This is reflected in the coding of this variable.

7.4 BATTERY DIRECTIVE: MEMBER STATES' STRATEGIC CHOICES

Given that the issues presented in the Commission's proposal for the Battery Directive had largely offsetting distributional patterns, the theory presented above predicts that member states would truthfully reveal their interests and willingness to give on the various issues and adopt cooperative bargaining strategies. The following two sections analyze these strategic choices in the negotiations that took place over the Battery Directive.

7.4.1 Battery Directive: Member States' Communication of Interests

Consistent with the predictions of the model and theory above, the overall truthful revelation of interests and willingness to give on these issues was a main characteristic of the negotiations on the Battery Directive.

With regard to the ban on cadmium, a number of informal meetings and discussions took place between the Presidency and other member states to try to find a workable compromise. An important feature of these discussions was how to construct a cadmium ban, while, at the same time, not forcing these industries to close. Member states on both sides discussed the extent to

which they could or could not accept various features of a partial cadmium ban. France truthfully revealed its red lines, in particular, clearly specifying the particular requirements, definitions, and qualifications necessary to protect their industry. On the more environmental side, member states were quite open about what they were and were not willing to accept. These meetings exemplified the truthful revelation of interests over restrictions on the use of cadmium in batteries and are consistent with the predictions of the theoretical argument above.

In addition, on the issue of collection rates, member states that opposed high collection rates for spent batteries also largely engaged in truthful revelation, openly discussing the interests and reasoning which underpinned their opposition to a high collection rate. Most new member states, in particular, did not have collection systems in place, and openly discussed this fact as the reasoning behind their desire for lower collection targets and their need for additional time built into the directive. “When discussing this issue, several member states said, ‘that time is too short. We have to build up a whole new system, to raise public awareness, and so on. So we need more time to achieve this level’” (Interview with member state representative 2006). States such as Greece that had particular difficulties related to dispersed populations and geographic features also openly discussed those problems and concerns with the other member states.

In addition to discussing their underlying interests, these member states were largely open about their red lines. However, some member states reported that they did not always perfectly report their bottom line. As one representative described, “We kept 5% for ourselves – between our red line and what we said.” However, despite the small differences between reporting and actual interests, most member states that opposed high collection targets overall were “absolutely open” about their bottom lines and “how far we were willing to go” (Interview with member state representative 2006). In addition, even those member states that strategically

misrepresented their actual numerical bottom line reported that overall they were “fairly open about how far we were willing to go and why.” Most importantly, the states that did not truthfully reveal their interests were a clear minority; the large majority of member states were open about their interests and willingness to give in these negotiations.

Therefore, despite some variation, the member states, overall, were open: truthfully revealing their willingness to give and the point at which they could not give any more on the various issues. These findings are empirically consistent with the abstract idea of the truthful revelation of interests predicted by the model and theory above.

7.4.2 Battery Directive: Bargaining Strategies

Consistent with the theoretical argument presented here, the offering of concessions was also an important part of member state bargaining strategies in the negotiations over the Battery Directive. First, the member states that supported the cadmium ban – the Scandinavian countries, in particular – willingly made significant concessions on this issue – accepting a very limited ban with a large number of exemptions, rather than the full cadmium ban they desired.⁸⁴ These concessions were made to accommodate the concerns of France, in particular, which was trying to protect its battery-producing industry. That this was a large concession, moving significantly from their preferred outcome, is evidenced by the joint statement by Denmark, Estonia, Spain, Lithuania, Austria, Slovenia, Finland, and Sweden, stating that they “regret the

⁸⁴ See (Auken, Hassi, et al. 2001) for an indication of the importance of this issue to Denmark, Sweden and Finland. A ban on cadmium at the EU level was something for which they had been pushing for many years prior to the Battery Directive proposal.

lack of ambition of the restrictions on the use of cadmium in batteries and accumulators” (16275/1/04 REV1: 16).

In return, France and other member states that opposed the cadmium ban conceded, and were willing to accept a Commission review accompanied by future proposals for future restrictions on the use of cadmium. They further conceded that the review and future Commission proposal could be set to take place “with a view to the prohibition of cadmium in batteries and accumulators” (5694/05). This was the concession made to the countries that had conceded and accepted a more limited ban than they preferred to have. This phased approach was also consistent with interests on the timing issue, presenting a limited restriction at this stage, “with the view to” future restrictions. This exchange typifies the willing exchange of concessions predicted by the theory presented here.

An exchange of concessions was also prevalent on the issues related to the collection of spent batteries and accumulators. In particular, member states including the UK and the majority of the Mediterranean and new member states that preferred to have a collection target that was as low as possible offered significant concessions on this issue. For most of these member states, the agreement that was reached was “as far as they could go.” In other words, they offered concessions on the battery collection target up to their red line.

In exchange, the Scandinavians, France, and other states that preferred higher collection targets also offered concessions on the collection target issue in order to meet the bottom lines of those states that could not give further. These states also offered large concessions regarding the deadline for the collection targets to be reached. “In the end, we extended the time frame for those that argued that it was too short to build up a whole new system” (Interview with member state representative 2006).

While the offering and exchange of concessions characterized the majority of member state bargaining strategies in the negotiations over the Battery Directive, some member states were not flexible in these negotiations. In particular, with regard to the battery collection targets, Belgium was unwilling to offer significant concessions, and was largely unhappy with what they viewed as the “low target rate” that was agreed upon. On the other side, Greece and Italy were largely unwilling to concede and accept collection targets that they argued were “unrealistic” and not reachable in practice.⁸⁵ Finally, Italy and Ireland were largely unwilling to concede and accept the partial ban and review “with a view to prohibiting, in particular, the use of cadmium in batteries and accumulators used in cordless power tools.”⁸⁶

Therefore, not all member state bargaining strategies perfectly followed the predictions of this model. However, bargaining strategies characterized by a very low degree of concession-offering were clearly the exception in this case, and were adopted by only four out of the twenty-five member states.

Despite these few exceptions, the bargaining strategies adopted by the majority of the EU member states in these negotiations were characterized by the willing offering of concessions. Furthermore, these concessions were offered to a fairly significant degree by states on both sides of the negotiation. The bargaining strategies adopted by the EU member states negotiating over the Battery Directive are therefore consistent with the predictions of the theory presented above.

⁸⁵ See statements by Greece and Italy in 16275/1/04 REV1.

⁸⁶ See statements by Italy and Ireland in 16275/1/04 REV1.

7.5 CONCLUSION: CAUSAL LOGIC AND MECHANISMS AT WORK

The Battery Directive does not necessarily represent a “hard” case for cooperative bargaining and the willing offering of concessions to be observed among states. However, this case is important because it illustrates the causal logic and observable implications of hypothesized impact of distributional patterns of the issues over which states bargain on the bargaining strategies that states adopt.

Most importantly, consistent with the central hypothesis presented by this study and observable implication 3 (related to the theorized causal mechanisms at work), in this case that was structured by issues with offsetting distributional patterns, the truthful revelation of interests and cooperative types of bargaining strategies largely characterized the strategic choices of the member states. In addition, consistent with observable implication 1, truthful revelation and cooperative bargaining strategies were adopted by a wide variety of different member states with different voting weights and different political cultures. Both old and new member states truthfully revealed their interests and willingly offered concessions. In addition, at least one of the three “big” member states adopted a largely cooperative bargaining strategy, as did the majority of small states. Finally, the member states that did not adopt cooperative bargaining strategies included both large and small member states, as well as member states argued to be largely Euro-skeptic and more European-oriented member states.

Finally, the negotiations on the Battery Directive highlight the logic which drives this argument. Consistent with the second observable implication, the interest-maximizing logic that underpins this theoretical argument is present in this case. For the member states that preferred a cadmium ban and high battery collection targets, the interviews conducted point to a central role that member states’ interest in achieving agreement played in driving their willingness to offer

concessions. Their interest in some form of a restriction on cadmium and some form of harmonization of battery collection targets at the EU level drove, to a large extent, member states' willingness to offer concessions on these issues.

For the member states that preferred low collection targets and to not have a ban on cadmium, the interview evidence highlights that the willing offering of concessions was largely driven by a need to have their interests reflected to some degree in the agreement that was reached. In other words, they wanted to prevent themselves from being left out of the majority coalition that reached a compromise agreement. For both groups of member states, then, as argued by the theory presented here, an interest-based logic can be seen as at least one important factor driving member states' adoption of more cooperative bargaining strategies.

However, because the cooperative bargaining strategies of the member states are consistent with the behavior that would be predicted if norms of reciprocity and compromise (i.e., an overall "Community method") were present in COREPER, aside from demonstrating that an interest-based logic is present, this case alone cannot evaluate the relative power of these two theoretical arguments. It is important, then, to compare this case to other negotiations in the EU that may not be as consistent with these norm-based predictions. Only when combined with these additional cases can the interest-based logic that underpins this theoretical argument be truly fleshed out and evaluated relative to the norm-based logic. The case analyses that follow in Chapters 8 and 9 take important steps in demonstrating the interest-based rather than norm-based logic largely at work in additional cases of EU bargaining.

8.0 THE SERVICES DIRECTIVE

The Services Directive is an important case in which to examine the impact of the issues structuring a bargaining interaction on the bargaining strategies that states adopt. First, the negotiations on this directive took place in two main stages. For each stage of the negotiations, a largely exogenous Commission proposal set the bargaining structure and issues over which the member states then bargained. These proposals each had a different issue structure, but the many other factors surrounding the case remained largely constant. Thus, this case allows for a “most similar” comparison of state bargaining strategies across the two phases of negotiations.

For reasons of research design, this case is thus an ideal one in which to examine the argument made here. It not only allows for an evaluation and comparison of the central hypothesis and observable implications in each phase of negotiations, but because the bargaining strategies of the member states varied across the two phases of negotiation, it also allows for a better evaluation of the potential alternative explanations related to member state characteristics and the norms of EU bargaining than could be carried out in the Battery Directive case.

In addition, the Services Directive was a very important, highly politicized dossier within the European Union. It is therefore not only an interesting case to examine in and of itself, but it also allows for an analysis in a setting in which a large degree of attention was paid to the negotiations that took place among the member states, a situation in which more cooperative types of bargaining strategies would not necessarily be expected.

Overall, the analysis presented here demonstrates that despite the highly politicized nature of the directive, the cooperative nature of member states' bargaining strategies varied widely across the two phases of negotiations. In particular, the strategic misrepresentation of interests and non-cooperative strategies resulted when the issues did not have offsetting distributional patterns. Conversely, when the issues over which the member states were bargaining changed to have more offsetting distributional patterns, their bargaining strategies also changed, and overall, the member states truthfully revealed their interests and adopted bargaining strategies that were largely cooperative in nature. These findings are consistent with the predictions of the theoretical argument made by this project. They further demonstrate that even in a case in which cooperative bargaining strategies and truthful revelation of interests would not be expected by current theorizing because of the highly public and politicized nature of the bargain, the predicted effect of offsetting distributional patterns on the cooperative nature of state bargaining strategies holds.

8.1 BACKGROUND OF SERVICES DIRECTIVE

One of the defining features of the European Union (EU) is that it is designed to create a single market among its member states. As laid out in the Treaty of Rome in 1957, the EU was founded on the idea of four freedoms - the free movement of goods; the free movement of services and freedom of establishment; the free movement of persons; and the free movement of capital. Together, these are the key goals that the EU's single market was intended to achieve.

Building on this foundation, the Single European Act, signed in 1986, was designed to further the goal of achieving this single market, "an area without internal frontiers in which the

free movement of goods, persons, services and capital is ensured” (OLJ 169 1987). The goal of this agreement was to lay out steps to establish this internal market by the end of 1992.

In March 2000, the European Council held a special meeting in which the heads of state discussed broad strategic goals for the European Union. A key focus of these discussions was the services sector of the EU’s single market. The Council recognized that while the EU had made great strides toward achieving the free movement of goods, many barriers to trade in services among the member states still existed. A report generated by the European Commission on the state of the internal market in services summarized the current state of the single market: “[A] decade after the envisaged completion of the internal market, there is a huge gap between the vision of an integrated EU economy and the reality as experienced by European citizens and European service providers” (2002/441 COM). Given the importance of the services sector in the EU economy, representing approximately 70% of the EU’s GDP (2002/441 COM), the “Lisbon Strategy” that resulted from this European Council set an objective for the EU to remove existing barriers to the free movement of services, exploiting “the considerable potential for economic growth and job creation afforded by the services sector” (2002/441 COM).

Following this broad mandate, the European Commission tabled a proposal in January 2004 for legislation to be agreed by co-decision,⁸⁷ which would take steps toward achieving a “genuine” internal market in services (2002/441 COM).⁸⁸ As a defining feature of this proposal, the Commission proposed to extend to the services sector the ‘country of origin principle’ that already underpinned the free movement of goods within the EU. If agreed, this principle would

⁸⁷ In other words, this proposal would have to be jointly agreed upon by the European Parliament and the EU member states in the Council of Ministers.

⁸⁸ In the economics and competition sector, the Commission has the sole right of initiative. In other words, the Commission was the only institution capable of presenting potential new legislation in line with this mandate from the European Council.

stipulate that, “a service provider is subject only to the law of the country in which he is established and Member States may not restrict services from a provider established in another Member State” (2002/441 COM: 3-4). In other words, service providers in other member states would be subject to the rules and regulations not of the country in which they were providing services, but of the country from which they came. This principle became an important point of contention throughout the negotiations.

8.1.1 Opposition to Services Directive

Unlike the majority of dossiers discussed in the EU, the Services Directive – and the country of origin principle, in particular – became highly publicized and politicized in the governments, among citizens, and in the media of the EU. First, there was fear in several countries in Western Europe that this directive would bring about of an “invasion” of their own member state of workers from the Central and East European member states that had joined the EU in 2004. The fear in France of an “invasion of Polish plumbers” was the oft-cited case used to illustrate these arguments in politics and in the media (e.g., Frost 2005; Ames 2006; Associated Press 2007).

More importantly, the country of origin principle was seen as a threat to the labor law and/or systems of collective agreements across much of Western Europe. The idea that the Services Directive was a threat to the “European Social Model” was highlighted by trade unions, in particular, and led to multiple demonstrations across Europe. There was “fear that under the cover of freedom to provide services, companies would have the right to evade the labor law of the country where these people were employed or working” (Interview with Deputy Permanent Representative 2007).

In countries such as Sweden, “Everybody had an opinion about the country of origin principle – in the newspapers and in the media. The trade unions had [a demonstration] over the Services Directive on the 1st of May. They were shouting on the streets of Stockholm – the translation is, ‘Save our lives. Save our jobs. Stop the European Services Directive.’ So it was kind of a heated [issue]” (Interview 2007). Similar types of demonstrations by trade unions, accompanied by support from a broad range of NGOs and political parties, took place in multiple member states including Belgium, France, and Sweden. In addition, the European Trade Union Confederation (ETUC) organized a protest demonstration with attendance estimated between 30,000 and 50,000 (Castle 2006) in Strasbourg where the European Parliament was meeting to discuss the Services Directive.

In line with this fear, the European Federation of Public Service Unions (EPSU) stated their position on the Services Directive as follows:

EPSU is concerned that collective agreements applied through legal mechanisms may be seen as “barriers to trade” and subject to challenge by ‘country of origin’ companies. This will not only undermine these agreements and lead to social-dumping but it may also make it harder to enforce collective agreements in countries with non-legal systems too. EPSU is also very concerned regarding the effect of the proposed services directive on national negotiating schemes, based upon collective bargaining negotiations between the social partners. EPSU deplores the fact that collective agreements and trade union action to promote workers’ rights are not seen as positive elements in European integration – elements which need to be promoted and reinforced, not dismantled (EPSU Congress 2004: 2).

Similarly, the Executive Committee of the ETUC issued a statement in December 2005. Directly contrary to the proposed country of origin principle, it argued that, “the exercise of a service activity should be regulated by the law of the country where the service is provided or carried out” (ETUC Executive Committee 2005). These positions reflect the broad and heated opposition the Services Directive raised. Further highlighting the high degree of politicization

of the Services Directive case, the opposition in France to the Services Directive is widely cited as underpinning the “no” vote in the French referendum over the European Constitution in 2005 (Frost 2005; Castle 2006; Associated Press 2007; Interviews 2005-2007).

8.1.2 Two Stages of Negotiation

The country of origin principle was the main focus of the negotiations that took place among the member states in the Council of Ministers. In February 2006, before political agreement was reached in the Council (i.e., before agreement was reached among the member states), the European Parliament (hereafter, “Parliament”) reached its first reading opinion on the Services Directive.⁸⁹ However, the Parliament’s agreement did not include the country of origin principle. Instead, its internal compromise laid out a new principle to underpin the directive, labeled the “Freedom to Provide Services.” This new driving principle required that the Member States “respect the right of the service provider to supply services and to guarantee the provider “free access to and free exercise of a service activity within its territory.” It therefore no longer stipulated that the rules of the country of origin would govern the service providers acting in another member state.

Building on this first reading agreement reached in the Parliament, the Commission presented to the Council of Ministers a modified proposal in April 2006. Rather than the country of origin, this new proposal over which the member states would then bargain adopted the

⁸⁹ Though officially this is the procedure laid out by the Treaties, in actual practice, it is extremely rare that the Parliament reaches its first reading agreement before the member states come to an agreement within the Council. Procedurally, the Parliament is supposed to reach its first reading opinion, then the Council can adopt its common position. In actual practice, a “political agreement” is often reached among the member states before Parliament’s first reading opinion. Then the “common position” is officially adopted in the Council. The Parliament’s agreement in the Services Directive therefore impacted the member state negotiations that followed in a way that it typically does not (Interviews 2006-2007). This impact is taken into account in the case analysis.

Parliament's Freedom to Provide Services principle as its defining issue. The Commission's second, "modified" proposal therefore laid out different issues which then structured the bargaining among the member states that followed. The overall negotiation process can therefore be broken down into two bargaining interactions, each structured by a different set of issues. Because a new issue structure lays out new parameters of the bargaining game, this can be theoretically modelled and analyzed by treating it as a new bargaining game (Lake and Powell 1999).

Providing empirical support for the analysis of the Services Directive negotiations as two separate bargaining interactions, there was a clear break in the negotiations among the member states between these two stages. At the beginning of its Presidency in early 2006, the Austrian Presidency held no meetings to discuss the Services Directive, instead choosing to wait for the Parliament to reach its first reading agreement. Only after the Commission presented its modified proposal did negotiations resume in the Council. Therefore, from the end of 2005 through April 2006 there was a clear break in the negotiations among the member states over the Services Directive (Interviews 2006-2007).

Together, these factors allow for a clear separation – both theoretically and empirically – of these negotiations into two separate bargaining interactions, each structured by a different set of issues. For purposes of identification, the first stage of negotiations, through the end of 2005 and structured by the original Commission proposal with the country of origin principle as the defining issue is labelled as the "Services 1" case. The second stage of negotiations beginning in April 2006 and structured by the modified Commission proposal, with the Freedom to Provide Services principle as the defining issue is labelled as the "Services 2" case. This second stage of negotiations took place from April to May 2006, and a common position (i.e., an agreement) was

reached among the member states on May 29, 2006. The compromise agreement reached during this phase of negotiations was then adopted without change by the Parliament.⁹⁰

The analysis which follows analyzes these two phases of bargaining among the EU member states in the Council of Ministers institutions. In each case, the issue linkage structure of the bargaining game is analyzed, as are the bargaining strategies adopted by the member states. Before this analysis can be carried out, however, an important factor must be considered. As highlighted by Chapter 5, the analysis of the distributional patterns of the issues in each bargaining case relies on a measurement of the bargaining space. It is therefore important to defend this coding for these cases, demonstrating that the bargaining space does not change within a given bargaining interaction.

8.2 CHANGES IN THE BARGAINING SPACE

The analysis of the distributional patterns of the issues set by each Commission proposal relies on a measurement of the bargaining space. The bargaining space is impacted by the particular set of issues over which states bargain and the interests of the bargaining actors on those issues (i.e., their position and willingness to give). To analyze the distributional patterns in each case, it is important to demonstrate that, in this case, the central issues and the interests of the member states on those issues remained largely constant through the course of each bargaining interaction.

⁹⁰ This allowed for a Second-Reading agreement to be reached on the Services Directive.

First, across the bargaining interaction analyzed as the “Services 1” case, the central issues over which the member states bargained remained the country of origin principle and the exemptions to limit the scope of the directive. When this set of issues was altered in early 2006 by the agreement reached in the Parliament and the new Commission proposal, the structure of the bargaining game among the member states changed. Following Lake and Powell (1999), a new game structure implies that a new bargaining interaction is taking place. Thus, the bargaining interaction that took place over the Services Directive after the modified Commission proposal is treated here as a separate bargaining interaction to be analyzed. Therefore, though the set of issues over which the member states bargain may change across different bargaining interactions, *within* each bargaining case – both Services 1 and Services 2 – the issues over which the states bargain is constant. A change in issues therefore does not impact the bargaining space or the measure of the distributional patterns in each bargaining interaction.

In addition, the evidence gathered from interviews with member state representatives and the public statements regarding these issues demonstrate that the member states’ positions and willingness to give on these issues remained largely constant across each bargaining interaction. However, one exception does exist to this overall continuity in positions. In bargaining on the Services Directive as a whole, Italy’s positions and linked give did change from a moderate liberal position to a slightly less liberal one in the change from the center-right Berlusconi government to the center-left Prodi government in April 2006. In general, however, both governments adopted positions that were more moderate than the two extreme camps.

Though this change in Italy’s positions did occur, its timing is such that it does not present a problem regarding the use of the bargaining space as a way to measure offsetting distributional patterns in the Services 1 and Services 2 cases. In particular, this change in

government took place in early April 2006. Instead of occurring during one of the bargaining cases, the change in position directly corresponds to the break between the Services 1 case and the Services 2 case. Therefore, while slightly altered from the negotiations over the original Commission proposal (Services 1) to the negotiations that took place over the modified Commission proposal (Services 2), Italy's position *within* each stage of negotiations remained constant, as did the positions of the other member states.

The measure of offsetting distributional patterns for each case is therefore not obstructed by the fact that the bargaining space changed because the interests of a member state changed during the bargain. Given this relative continuity in the bargaining space, the distributional patterns of the issues in the Services 1 and Services 2 cases can be analyzed using the coding rules laid out in Chapter 5.

8.3 SERVICES 1: DISTRIBUTIONAL PATTERNS OF KEY ISSUES

The key issues in the Services 1 negotiation were set by Articles 16 and 17 in the original Commission proposal. Article 16 laid out the defining principle which would underpin the Services Directive – the country of origin principle. Article 17 provided for exemptions from this principle. While there were several other issues laid out in the proposal, these are the two issues on which almost all negotiations among the member states focused at the COREPER level. These two issues – the country of origin principle and scope of the directive – are thus treated as the issues which structured the bargaining interaction among the member states over the original Commission proposal from 2004 to 2005.

8.3.1 Services 1: Relative Exogeneity of Issues

It is important to note that these issues presented by the Commission proposal and which then structured bargaining among the member states were largely exogenous to that bargaining interaction. Overall, the largely liberal orientation of the proposal reflected the liberal economic interests of the Commission and the main Commissioner in charge of this dossier, Commissioner Bolkestein (Interviews 2005 – 2007).⁹¹

More particularly, the main issues included were also largely exogenous to member state interests and interactions. First, the country of origin principle was included because it was the principle that already governed free trade in goods among the member states. The Commission proposal was therefore intended to simply extend this principle to the free movement of services, without realizing the significant opposition that it would raise. “We have the country of origin principle in the area of the free movement of goods. And in the area of goods this is not questioned at all. It functions well, although there are things that must be improved. But with services it suddenly became a big problem because it’s linked to the free movement of persons” (Interview with Services Directive participant 2007).

In addition, the exemption of some services sectors from the directive’s scope was included in the Commission proposal because several sectors were already covered by current EU legislation. For reasons of legal clarity, these issues needed to be exempted from the Services Directive proposal (Interview with Council Secretariat representative 2007).

Thus, while the idea behind the Services Directive resulted from an agreement reached among the member states, the particular set of issues which structured their bargaining

⁹¹ That this original proposal was in line with Commissioner Bolkestein’s interests can be further supported by a letter to the editor he wrote criticizing arguments against the Services Directive (Bolkestein 2005).

interaction was the result of the legal structure of the EU as it was at the time of the proposal, and the interests of the Commission itself.

8.3.2 Services 1: Positions of the Member States

In approaching this negotiation, there were two main camps/coalitions of member states. For purposes of identification, these camps are identified as a “more liberal” group and a “less liberal” group. The more liberal group consisted of the majority of new member states admitted in 2004 and several old member states, including the United Kingdom, Luxembourg, the Netherlands, Ireland, Finland, Italy, and Spain. Their main focus was the desire to export their services freely across the EU.

The ‘less liberal’ group consisted mainly of the old member states, led most strongly by France, Belgium, Greece, Portugal, and Denmark. Less strong, but a part of this coalition were states including Germany, Sweden, and Austria. Though several of these states had service sectors that could potentially compete well on the EU market, their main interest was in insulating their social labor market models and preventing an influx of service providers from other member states.

These coalitions were composed largely of the same member states across both of the main issues. On the issue of the country of origin principle, the more liberal group supported this driving principle while the less liberal group opposed it; on the issue of scope, the more liberal group wanted as few exemptions as possible, while the less liberal group wanted to expand the list of exemptions. Figures 8.1 and 8.2 summarize these positions, plotting the ideal point of each member state on the one-dimensional issue space.

Regarding the country of origin principle, six member states - Denmark, Belgium, France, Portugal, Cyprus, and Greece – went publicly on record in opposition to the country of origin principle, opposing it even as a basis for discussion on which negotiations could proceed (15259/04 COR4 REV5). Less extreme than this, though they were opposed to the country of origin principle, states such as Germany, Sweden, and Austria were at least willing to accept it as a starting point for discussions (15259/04: 9).

The remaining member states supported the principle “as an essential element of the proposed Directive” (15259/04: 9), and are therefore coded as supporting the country of origin principle. In particular, the UK, the Netherlands, Spain, Poland, the Czech Republic, and Hungary went explicitly on record in support of this principle, writing to the European Commission to express fears that the Services Directive may become too diluted through the course of negotiations. These positions regarding the country of origin principle are laid out in Figure 8.1 below.⁹²

⁹² To protect the confidentiality of the non-publicized positions of the member states, the figures in all the case studies are coded using randomly assigned labels in place of member state names. Appendix D provides general characteristics of the states assigned particular labels.

and limit the scope of the directive in particular areas, these states also desired to ensure that the directive performed its function in liberalizing other service sectors. These member states were therefore coded as a “small” distance from the less liberal extreme which desired a fairly narrow scope for the directive. These positions on the issue of the scope of the directive are laid out in Figure 8.2 below.

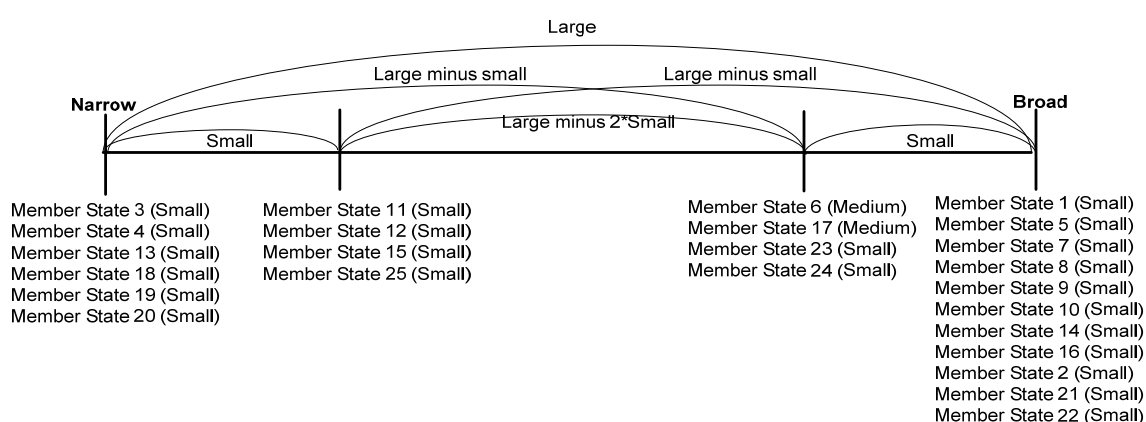


Figure 8.2. Issue Space: Scope of Directive

8.3.3 Services 1: Linked Give of the Member States

In Figures 8.1 and 8.2, the linked give of each member state is indicated in parentheses. In general, member states on both sides of the negotiations were largely inflexible in approaching negotiations over the original Commission proposal. The interests and red lines of member states in the less liberal camp reflected an inability to accept an agreement which closely reflected the issues as they were proposed by the Commission. The interests and red lines of the member states in the more liberal camp reflected a reluctance to accept anything significantly

different from the Commission's (original) proposal. A representative from a more liberal member state highlighted the reasoning behind the general inflexibility on the country of origin principle. "It was difficult even to *think* how [we might] change toward the countries [on the other side], because it was a principle. It was not really about appropriate wording; it was a matter of *principle*. So I think compromises were not possible" (Interview with Mertens Counselor 2007). The member states on both sides are therefore coded with a "low" degree of linked give on both issues.

Several member states, however, deviate from this general coding. First, despite the fact that the scope of the directive was linked as an issue which could further be limited, France was completely inflexible regarding the country of origin principle due to the directive's highly politicized nature among the French citizens. In order to capture this even greater degree of inflexibility, France was coded as having "zero" linked give on this issue. In addition, some member states in the more liberal camp were somewhat flexible in their positions, and were thus coded as having a slightly larger linked give.

8.3.4 Services 1: Distributional Patterns Not Offsetting

Using the coding rules laid out in Chapter 5, the positions and linked give of the member states can be used to analyze the distributional patterns of the two main issues – the country of origin and scope.⁹³ In particular, the issues presented by the Commission's original proposal for the Services Directive did not have offsetting distributional patterns. This makes intuitive sense

⁹³ The nine measures of offsetting distributional patterns are valued as follows: D1/G1 = -0.248, D1/G2 = -0.248, D1/G3 = -0.237, D2/G1 = -0.207, D2/G2 = -0.207, D2/G3 = -0.197, D3/G1 = -0.193, D3/G2 = -0.193, D3/G3 = -0.185.

given the central issues in the Commission proposal. For member states on both sides of the negotiation, the country of origin principle was the most important issue. In other words, member states on both sides had a high degree of interest at stake in the outcome of the bargain on this issue, and a lesser degree of interest at stake on the scope issue. This directly contradicts the idea that different states have a large degree of interest in winning on *different* issues – the defining feature of issues with offsetting distributional patterns.

In the view of the more liberal member states, giving on the country of origin principle would significantly reduce or even eliminate the economic benefits that they expected would be conferred through the liberalization of services, even if the new, less liberal principle on which agreement was reached applied to a wide range of services sectors. In the view of the less liberal member states, accepting the country of origin principle, even if this principle was then applied only to a small number of services sectors, would present a threat to the labor law and collective agreement systems that many of them had. The member states on opposite extremes therefore did not have a large interest at stake for winning on opposite issues. For neither group could achieving their ideal point on the scope issue provide a payoff that could ‘offset’ the interest gained by the states on the other side for winning on the country of origin principle.

8.4 SERVICES 1: MEMBER STATES’ STRATEGIC CHOICES

Given that the country of origin principle and the scope of the directive were not issues with offsetting distributional patterns, the theory presented here argues that when bargaining over these issues, the member states would not truthfully reveal their interests and willingness to give on the issues and would adopt largely non-cooperative types of bargaining strategies. The

following two sections analyze these strategic choices in the member states' bargaining interaction over the original Commission proposal.

8.4.1 Services 1: Member State Communication of Interests

In this phase of negotiations, rather than truthfully revealing their interests and the extent of their willingness to give on the main issues, the EU member states focused instead on insisting that they required their own ideal point regarding the country of origin principle in order to be able to accept an agreement. As described by member state representatives involved in the negotiations, instead of working toward compromises, "we all would just repeat our position" (Interview with Mertens Counselor 2007). "Discussions got stuck at an early stage and didn't move." Despite compromise formulae proposed by the various Presidencies, member states "stuck to their guns" (Interviews 2005-2007). In addition, negotiation participants widely reported that "it was mainly the country of origin principle that created these problems" (Interviews 2005-2007). This finding is consistent with the fact that member states on both sides of the negotiation had a high degree of interest at stake in the outcome of the country of origin issue.

Rather than revealing the extent of their willingness to give on the issues, the member states presented their interests as "all or nothing," despite some (small) degree of flexibility in their positions. In other words, this strategic choice followed the predictions of the theory presented here. In the negotiation structured by the original Commission proposal in which the central issues had distributional patterns which were not offsetting, the member states did not engage in the truthful revelation of the extent of their willingness to give on the issues.

8.4.2 Services 1: Bargaining Strategies

In addition to the lack of truthful revelation of interests, the theoretical argument predicts that in this bargaining interaction, the member states would adopt largely non-cooperative bargaining strategies. In line with this prediction, when bargaining over the original Commission proposal, the EU member states did not engage in offering concessions, and several member states adopted tactics associated with the least cooperative type of bargaining strategies – tactics designed to extract concessions from other states.

Member states opposed to the country of origin principle adopted highly non-cooperative bargaining strategies in this phase of negotiations. Rather than offering concessions, these member states instead demanded concessions on the country of origin principle. In addition, early in these negotiations, several of the less liberal member states worked to construct a blocking minority to use as leverage in the bargaining process. Given that this agreement was subject to a super-majority decision rule, a blocking minority would allow these member states to prevent any agreement from being reached that did not reflect their interests to their satisfaction. In other words, this strategy was aimed at trying to “hold the directive hostage” in order to extract concessions (Interviews 2006). However, they were not able to assemble enough votes to be able to block an agreement. “It was not absolutely clear that [we had] a blocking minority and we were advising the capital that there was probably not a blocking minority” (Interview with Deputy Permanent Representative 2007).

Given that they could not rely on a blocking minority, these member states then adopted another bargaining tactic designed to extract concessions from the other side. In particular, several less liberal member states worked to delay negotiations within the Council institutions, “not allowing things to move at all” and, instead, “a number of us did a lot in terms of trying to

influence the Parliament” (Interviews 2005-2007). Member states such as France and Denmark lobbied the rapporteur and shadow rapporteur as well as MEPs from their own states to push for an agreement in Parliament that reflected their own interests – the removal of the country of origin principle, in particular.

The Parliament plays an important role in the co-decision process along with the Council of Ministers in much EU legislation. In Pillar 1 legislation⁹⁴ such as the Services Directive, both the Parliament and the Council must reach a joint agreement for a directive to be adopted into EU legislation. By working to have their interests reflected in the Parliament’s decision, these member state would have the power of the Parliament behind them as leverage to extract concessions from the other side within the negotiations among the member states within the Council of Ministers, and/or in the negotiations between the Council and the Parliament that would follow in the Second Reading and Conciliation.

I am working to do that now - that is, to seek a context in the European Parliament to try to further our [national] points of view [on the Services Directive]. Also in other cases we may try to circumvent the inability to get national points across in Council negotiations by trying to get the Parliament to try to adopt our views. That is not always very easy, but then you have the weight of Parliament, [which will matter in future Parliament-Council interactions], behind you when you negotiate with the other member states now (Interview with Deputy Permanent Representative 2005).

These member states therefore adopted the most competitive of tactics. Rather than offering concessions, several less liberal member states adopted tactics aimed specifically to extract concessions from the more liberal states.

Member states in the more liberal camp also adopted largely non-cooperative bargaining strategies. Unlike the less liberal states, in general, these states did make some concession offers

⁹⁴ Pillar 1 legislation includes environmental, economic, and social policy.

related to the scope of the directive. In particular, the majority of more liberal states were willing to concede to some degree on the scope of the directive, on the condition that the country of origin principle was the driving principle of the directive.⁹⁵ They were therefore very small concessions in relation to the dossier as a whole, and were explicitly linked to the receipt of a concession on the country of origin principle that the other side was not willing to give. Therefore, the bargaining strategies of the more liberal states were the least cooperative end of the spectrum of bargaining strategies in which concessions are willingly offered.

In general, as predicted by the theory presented by this project, the bargaining strategies adopted by the EU member states during this phase of negotiations were largely non-cooperative in nature. As one participant in the negotiations summarized, “Member states were largely looking for problems rather than solutions” and overall, there were “no compromises” (Interviews 2006).

8.5 SERVICES 2: DISTRIBUTIONAL PATTERNS OF KEY ISSUES

In February 2006, the Parliament reached its first reading agreement and, in April, the Commission presented a modified proposal to the Council adopting the changes made by the Parliament. This modified proposal laid out a new set of issues which structured the bargaining interactions among the member states in April and May 2006.

The key issues in this stage of the negotiation were laid out in Articles 16, 17, and 41 in the modified proposal presented by the Commission in April 2006. Reflecting the compromise

⁹⁵ For an example of the firmness of the position of the more liberal camp on the country of origin principle, see (Associated Press 2006). Though discussing the more transparent European Parliament bargaining, it illustrates this logic and the “demand” for concessions on this issue.

reached in the Parliament, Article 16 laid out the Freedom to Provide Services as the directive's defining principle. As in the original proposal, Article 17 then provided for exemptions from this principle. In addition, a third issue was raised to the forefront of the negotiations in April and May 2006. This issue, embodied in Article 41, called for the "screening" of national legislation to ensure its compliance with the stipulations in the directive. It required that during the period of the transposition of the Services Directive to national legislation, member states:

will have to conduct a 'screening' of their legislation in order to ascertain whether above mentioned requirements exist in their legal systems and, at the latest by the end of the transposition period, Member States must draw up a report on the results of their screening. Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their observations on these reports. At the latest by 31 December 2008, the Commission will draw up a summary report, accompanied where appropriate by proposals for further initiatives (2006/160 COM: 31-32).

Though the screening clause was also present in the original Commission proposal, it was not an issue that was discussed to a large extent in the first stage of negotiations. It was raised, largely by the Presidency, to the forefront of negotiations over the modified proposal. The issue discussed in the negotiations "was to broaden the [screening] concept [as it was in the proposal], and to use it as something that should make sure that [the directive] would work, and produce results in the real-world in terms of furthering the internal market" (Interview with Deputy Permanent Representative 2007).

In addition, while there were several other issues laid out in the proposal, these were the issues on which the majority of negotiations among the member states focused at the more political levels. These issues – the freedom to provide services principle, scope of the directive, and screening – are thus analyzed here as the key issues that structured the bargaining interaction among the member states over the modified Commission proposal in April and May 2006.

8.5.1 Services 2: Relative Exogeneity of Issues

Despite the fact that this modified proposal was presented after negotiations among the member states commenced, the issues which structured bargaining among the member states in this second phase of negotiations on the Services Directive were largely exogenous to the member states' bargaining interactions. The previous member state negotiations, as well as expectations of the bargaining which would follow, were not factors that drove the adoption of these particular issues.

First, the issues in Articles 17 and 41 were largely a reflection of the Commission's own interests and existing EU legislation. The possibility of exemptions (i.e., the issue of the directive's scope), as before, was carried over to this modified proposal to remove sectors from the scope of the directive that were already covered by existing directives for purposes of legal clarity. Additional exemptions were included in the negotiations to reflect the compromise reached among the different political parties in the Parliament, and were thus largely designed to reflect Parliament's interests. Article 41 was included largely in line with precedents set in prior legislation. In particular, the Commission plays an important role in ensuring member state compliance with EU legislation in many different issue areas. This screening procedure fit with that precedent.

More importantly, despite the fact that several member states engaged in lobbying Parliament on behalf of their own interests, the particular compromise over the defining principle that was reached in the Parliament – the Freedom to Provide Services principle – was largely a result of the interactions within the Parliament itself. As argued by one individual involved in the Parliament's role in the Services Directive, "They decided that there should be meetings on a high level between MEPs who were involved in the work from the two largest [parties]. And so

there was a series of meetings which included forty-five MEPs from the EPP [(European People's Party)] and forty-five MEPs from the Socialist group where these different issues were worked out. And with regards to Article 16 – [moving from] the country of origin to the freedom to provide services – this was a text that was drafted by the two groups' legal experts" (Interview with Parliament representative 2006).

Rather than being impacted by member state bargaining, the issue structure was therefore largely a reflection of the interests and political process in the European Parliament and Commission. Given these sources of the key issues, following the logic of the model in Chapter 3 and treating this issue structure as largely exogenous to the member states' bargaining interactions is largely consistent with the details of this case.

8.5.2 Services 2: Positions of the Member States

As in the previous phase of negotiations, two main camps existed among the member states – a more liberal and a less liberal group. The constitution of these groups was also largely constant across both phases, with the exception of Italy, whose position shifted with a change in government.

The less liberal camp, as well as the more moderate states, supported having the new Freedom to Provide Services principle as the principle that would drive the liberalization of the services sector through this directive. The more liberal camp, however, opposed this change and wanted to return to the country of origin principle. The less liberal and moderate member states viewed this principle as a "good compromise" that was reached in the Parliament. Conversely, the Freedom to Provide Services principle was largely viewed by the more liberal states as an "imposition" of the other side's interest. This latter view was held most strongly by the new

member states. “The new member states were not very satisfied with what had happened in the Parliament. They felt that the old member states had “won” the battle through the Parliament – which was the case” (Interview with Deputy Permanent Representative 2007). These positions regarding the Freedom to Provide Services principle are illustrated in Figure 8.3.

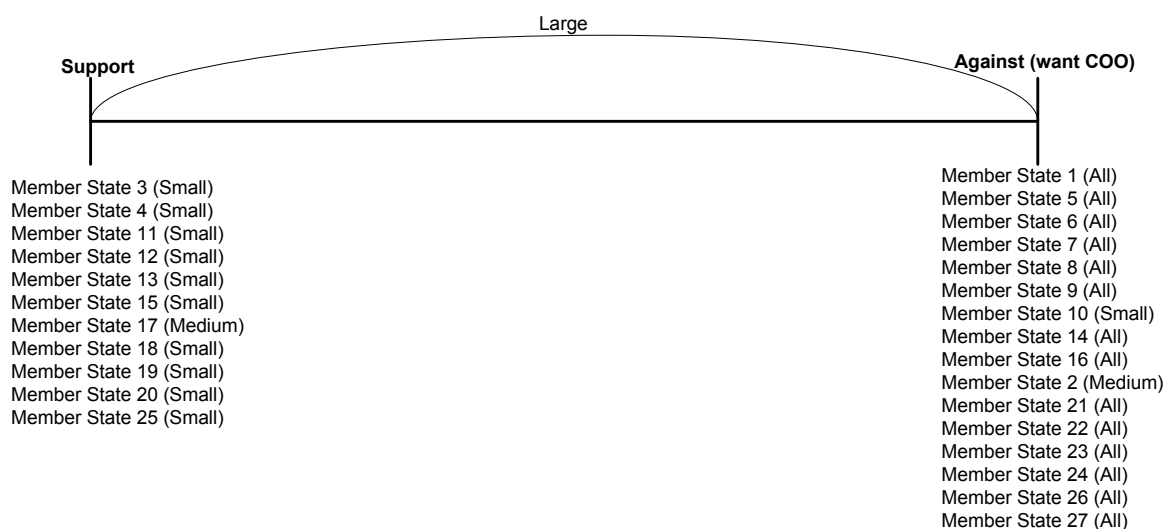


Figure 8.3. Issue Space: Freedom to Provide Services Principle

On the issue of scope, the less liberal camp generally desired a limited scope for the directive. Given the expansion of the list of excluded sectors brought about in the Parliament’s compromise, the majority of member states in this camp were satisfied with the additional exemptions that were included in the modified Commission proposal. More extreme member states such as France desired to exclude even more sectors from the scope of the directive. One of these sectors, in particular, was the interest of several member states in excluding notaries from the directive’s scope. Member states in the more liberal group were either satisfied with the scope of the modified proposal, or wanted to reduce the list of excluded sectors. Figure 8.4 lays out these positions.

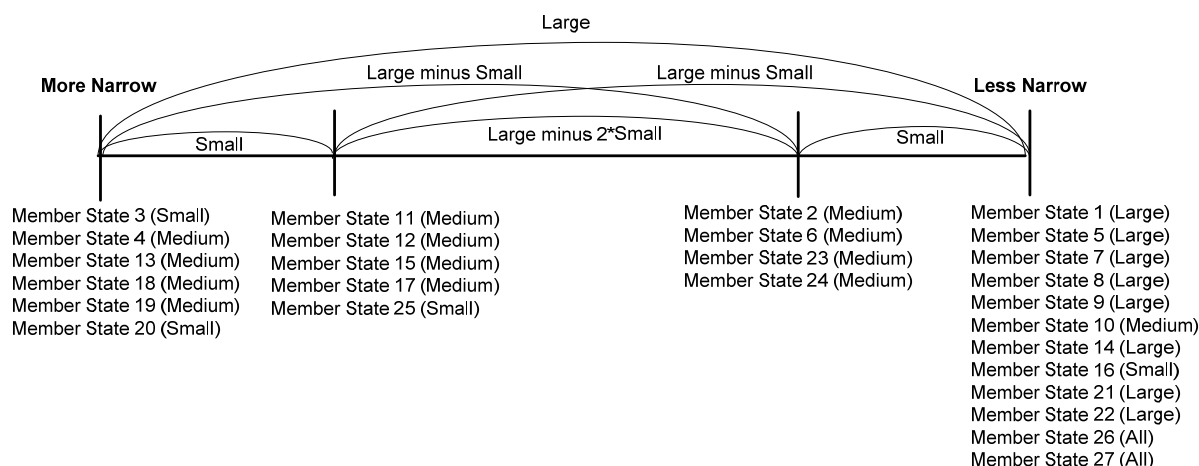


Figure 8.4. Issue Space: Scope of the Directive

Unlike the other issues, the member state positions on the screening issue did not conform perfectly to the less liberal and more liberal coalitions that characterized the other issues. In general, the more liberal member states supported the screening of national legislation and wanted to expand the screening of legislation from the elements present in the Commission proposal, while the less liberal states did not support the screening provision or its expansion.

However, several member states on both sides deviated from these general positions. In particular, though largely a member of the more liberal coalition, Luxembourg did not support the screening clause. It was seen as a placing a large burden on the administration of the member states and/or as giving too much power to the European Commission, and opposed on these grounds.

In addition, some member states that opposed the country of origin principle and were a part of the less liberal coalition supported (or did not oppose) the expansion of the screening clause. Though opposed to the country of origin principle, these member states also desired to have a directive that was effective in decreasing the barriers to trade in services among the

member states. The screening clause was seen as a way help ensure the directive's effectiveness. This seemingly contradictory reasoning reflected the positions of member states such as Denmark – states that had both a system of collective agreements and a strong services sector. They needed to protect their system of collective agreements from possible threats by the Services Directive, but also recognized that their service-based sectors would benefit by being able to compete freely on the EU market. These member states therefore opposed the return to the country of origin principle, but supported the expansion of the screening clause. These positions are illustrated in Figure 8.5 below.

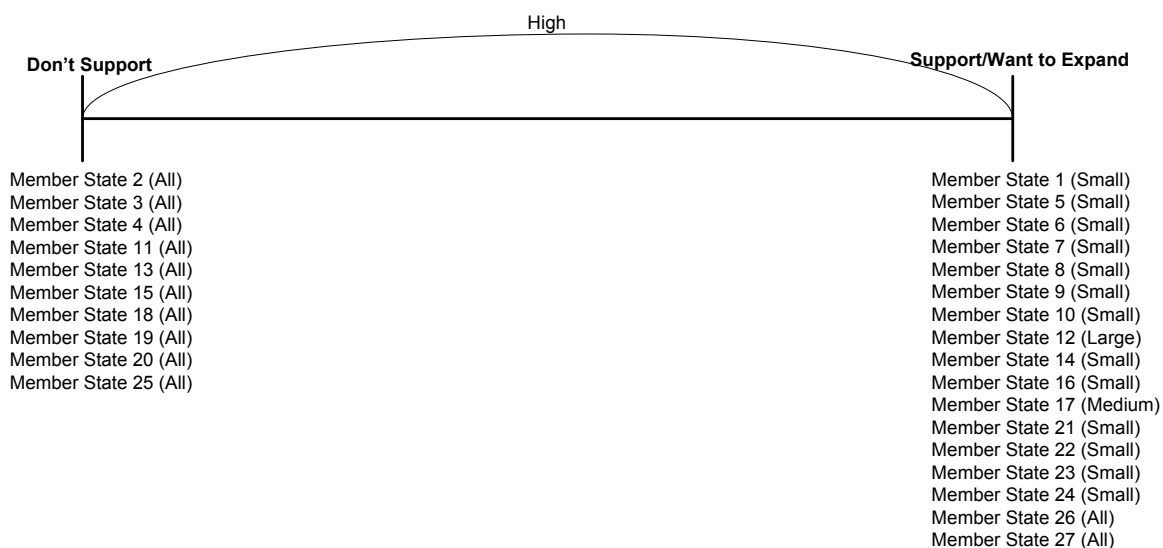


Figure 8.5. Issue Space: Screening Clause

8.5.3 Services 2: Linked Give of the Member States

Though they preferred to have the country of origin principle, the more liberal member states interests were such that they could be willing to accept the Freedom to Provide Services as the

principle underpinning the Services Directive. For the more liberal member states, the possibility for the Commission to screen national legislation and to thus eliminate barriers to trade in services in this way was an alternative means through which a (somewhat) functioning directive could be achieved. Given the inclusion and possible expansion of the screening clause, the red line position of the more liberal states included an agreement in which the Freedom to Provide Services was the driving principle. The linked give of the more liberal member states on the driving principle was therefore large *because* the screening issue was linked to it.

The less liberal states, on the other hand, as a whole, were not flexible on the Freedom to Provide Services. The other issues included were not enough to offset the cost of a return to the country of origin principle. They therefore had a very small degree of linked give on that issue. However, despite their general opposition to the inclusion of the screening clause, the less liberal member states were willing to accept it in the directive. They recognized that giving on this issue was “the price to pay” to achieve their ideal point to be reached on the Freedom to Provide Services principle (Interviews 2006-2007). Therefore, because these two issues were linked, the less liberal member states were able to have a bottom line that included an agreement with an expanded version of the screening clause. The more liberal states were not flexible on this screening issue, as their interest in a directive that was effective in liberalizing trade in services depended on its inclusion.

On the issue of scope, the less liberal camp was somewhat flexible, given that the services that were liberalized by the directive would now be subject to the “Freedom to Provide Services” rather than the country of origin principle. However, some states such as France were unwilling to accept an agreement without additional exemptions for specific services – notaries, in particular. In other words, the bottom line of these member states reflected that additional

exemptions would be needed in order for them to be able to agree. These member states therefore had a small linked give on this issue. Given their interest in reaching an agreement which could begin to liberalize trade in services, and the inclusion of the screening issue, the more liberal member states' bottom lines reflected a fairly high degree of flexibility on the issue of the directive's scope. These bottom lines are reflected in the linked give measures reported in the figures above.

8.5.4 Services 2: Offsetting Distributional Patterns

Using the coding rules laid out in Chapter 5, the positions and linked give of the member states described above demonstrate that unlike the issues in the original proposal, the issues presented by the Commission's modified proposal had largely offsetting distributional patterns.⁹⁶ This is consistent with the description of the issues provided by the participants in the negotiations. Overall, winning on the screening issue was of central importance to the more liberal member states, while winning on the Freedom to Provide Services principle was of central importance to the less liberal states. This is not to say that the defining principle was not important to the more liberal member states, but merely that the payoff from the screening issue could at least largely substitute for the one that would be received from the country of origin principle.

Evidence of this is present in the interviews conducted. "If not a perfect substitute for the country of origin principle, at least [it was] something that should make sure that [the directive] would work, and would also produce results in the real-world in terms of furthering the internal

⁹⁶ The nine measures of offsetting distributional patterns are valued as follows: D1/G1 = 0.120, D1/G2 = 0.130, D1/G3 = 0.133, D2/G1 = 0.139, D2/G2 = 0.148, D2/G3 = 0.151, D3/G1 = 0.152, D3/G2 = 0.157, D3/G3 = 0.161.

market” (Interview with Deputy Permanent Representative 2007). This trade-off possibility is reflected in the coding of the distributional patterns of these issues.

8.6 SERVICES 2: MEMBER STATES’ STRATEGIC CHOICES

Given that the Freedom to Provide Services, scope of the directive, and screening were issues which had offsetting distributional patterns for the EU member states, the theory presented here predicts that within their bargaining interaction, the member states would truthfully reveal their interests and willingness to give on the issues and adopt cooperative types of bargaining strategies. The following two sections analyze these strategic choices in the bargaining that took place over the modified Commission proposal.

8.6.1 Services 2: Member States’ Communication of Interests

Unlike the negotiations that took place over the original proposal, in this phase of negotiations, the member states truthfully revealed their interests and willingness to give in this new bargain. Given the differences in the distributional patterns of the issues over which the member states were bargaining in the two phases of the Services directive, this change to the truthful revelation of interests in this phase of the negotiations is consistent with the predictions posited by the theory.

By March 2006, it was clear to all parties involved – member states, the Parliament, the Commission, the media and citizens across the EU – that “the Parliament had altered the nature of the bargain over the Services Directive” (Interview with Deputy Permanent Representative

2006). Despite the fact that the Commission had not come out with its modified proposal (which reflected “almost perfectly” the changes made by the Parliament in its first reading agreement), it was clear to all member states that the Commission supported the Parliament’s agreement and would adopt that as the new baseline on which Council negotiations would take place.

In March 2006 at the meeting of the European Council, “the new baseline for the negotiations was [therefore] clear” to the EU member states and their heads of state (Interviews 2005-2007). Modified bargaining strategies in relation to the issues set by the Parliament were already in progress at the time of this meeting (Interviews 2006-2007). This information was reflected in the text of the Council Conclusions itself: “The European Council takes good note of the Commission's intention to base the amending proposal largely on the outcome of the European Parliament's first reading” (7775/1/06 REV1: 20).

At the March 2006 European Council meeting, the heads of state truthfully revealed their member states’ willingness to give on the various issues. In particular, a unanimous “political commitment” was reached in this European Council, signaling a willingness on the part of all member states to reach an agreement on the Services Directive as it was reflected by the Parliament’s vote (Interviews 2007). As described by one participant in the negotiations over the formulation of these conclusions, “[They were] carefully formulated so all member states, regardless of where they stood on the substance, could see the reflection of their positions in these conclusions” (Interview 2007). They thus included a truthful revelation of positions from both camps of member states.

On the part of the more liberal member states, a statement of “welcoming” Parliament’s agreement and indicating their willingness to proceed on these terms was an important revelation of their willingness to accept the Freedom to Provide Services as the underlying principle of the

directive. This is reflected in the text of the Conclusions: “The European Council stresses that the internal market for services must be made fully operational, *while preserving the European social model*, by securing a broad consensus on the Services Directive. The European Council welcomes the European Parliament's vote...” (7775/1/06 REV1: 20, emphasis added). As the representative from one of the more liberal, new member states stated, “We had said [in the Council Conclusions] that since services are important, we will vote for it [in this form]. It was the first time that the positions were so open before in these negotiations. ... We were [now] transparent” (Interview with Mertens Counselor 2007).

These Council Conclusions also included an implicit⁹⁷ reference to the screening clause of the directive, by agreeing that “the internal market for services must be made *fully operational*” (7775/1/06 REV1: 20, emphasis added). Therefore, on the part of the less liberal member states, the Council Conclusions reflected their willingness to “give” on this issue and accept an agreement with a stronger screening clause.

This truthful revelation of interests was not only reflected in the Council Conclusions in March but also largely characterized the negotiations that followed. Overall, as one representative from a less liberal member state described, “[In this phase of negotiations], we showed clearly our red lines” (Interview with Deputy Permanent Representative 2006). Therefore, unlike during the negotiations that took place prior to the Parliament’s agreement in February 2006, the bargaining strategies adopted by the member states in the Council included the truthful revelation of their interests and willingness to give on the issues set by the Parliament.

⁹⁷ That this is implicit in this statement is confirmed by interview evidence with participants in the negotiations over the draft of these Conclusions.

8.6.2 Services 2: Bargaining Strategies

The theory developed in Chapters 3 and 4 argues that, when truthful revelation of interests occurs in bargains characterized by issues with offsetting distributional patterns, this will lead member states to adopt more cooperative bargaining strategies. In line with this expectation, the willing offering of concessions – i.e., more cooperative bargaining – was a central feature of the bargaining strategies in this phase of negotiations. In this phase, “all member states, without exception, realized that we [had] to be extremely flexible and prepared to compromise” (Interview 2007).

The less liberal states were flexible largely because they recognized that many of their interests were already reflected in the change from the country of origin to the Freedom to Provide Services as the underlying principle. Given the truthful revelation of the more liberal member states’ interests in the Council Conclusions, they also recognized that they would be able to “win” on this issue, and therefore that they needed to give something in return. “In these phases after the presentation of the Commission’s revised proposal, we have to be quite flexible because we understand that other member states were quite unhappy with this revised proposal, and we have to address also their concerns. And you cannot have a directive written by yourself. So in these phases of the negotiation, we are more flexible than we were in the previous phase before the European Parliament vote” (Interview with Mertens Counselor 2006).

For these less liberal member states, the willing offering of concessions on the screening clause was a key feature of their bargaining strategy. In terms of the coding of the cooperative nature of these concessions, however, it was not a very large concession, and it was one that was willingly made only given that they already knew they would be able to “win” on the Freedom to Provide Services” principle, given the other sides’ truthful revelation of their bottom line which

reflected a willingness to accept this as the driving principle. Therefore, while they were not the most cooperative in terms of the coding of the variable, these strategies were significantly more cooperative than the concession-extracting tactics these states had adopted in the first phase of negotiations. This difference in strategies between the two phases of negotiations is consistent with the theory posited here – becoming more cooperative when bargaining over more offsetting issues.

The more liberal member states were even more cooperative in their strategy in this phase of negotiations. These states willingly offered concessions on the “Freedom to Provide Services” principle. In the coding of the cooperative nature of these concessions, it was a fairly significant concession that was made – altering the very basis on which the liberalization of services would take place – and was thus coded as a “medium” degree of concession. Furthermore, this concession, though it clearly had *quid pro quo* aspects related to the screening clause, was also made before any concessions were officially received on the screening issue. These concessions were instead largely based on an overall interest in reaching an agreement. Therefore, like the less liberal member states, the bargaining strategies of the more liberal member states were more cooperative in nature than the strategies they had adopted in the first phase of negotiations.

8.7 CONCLUSION: COMPARISON OF THE TWO PHASES

A comparison of the bargaining on this directive highlights the role that the distributional patterns of the issues had on the bargaining that took place among the EU member states over the Services Directive. In both phases of negotiation, the member states involved remained constant.

Furthermore, with the exception of two states, even the particular individual representing each state in the COREPER negotiations was the same across both phases of bargaining (i.e., the Deputy Permanent Representative was the same). In addition, the bargain itself was highly public and politicized in both phases of negotiation, and the voting rule and institutional EU setting within which the bargain took place were held constant. Finally, in both cases, the member states were engaged in bargaining over legislation designed to liberalize and break down barriers to trade in the services sector across the member states.

In general, these two cases of bargaining were very similar in nature. The main difference lay in the characteristics of the central issues which structured the bargaining among the member states. The issues set by the original Commission proposal did not have offsetting distributional patterns, while the issues set by Parliament's agreement and modified Commission proposal were largely offsetting.

8.7.1 Changes in State Bargaining Strategies

In these highly similar cases, the revelation of interests and bargaining strategies of the member states changed when the distributional patterns of the issues over which they were bargaining changed. Describing the change in the revelation of interests, one member state representative compared the two phases of negotiation. "Before the Parliament's [decision] ... the positions were held between ourselves. ... [After the Parliament's vote], the positions were opened" (Interview with Mertens Counselor 2007). In a similar way, the member states engaged in the willing offering of concessions in the second phase of negotiations, while they were not willing to do so in the first phase.

This difference in the member states' strategies between the two stages of negotiations is also consistent with the theory posited here – becoming more cooperative when they were bargaining over more offsetting issues. Consistent with observable implication 1 presented in Chapter 4, all member states adopted bargaining strategies that were more cooperative (or at least as cooperative) in nature in the negotiations over the modified proposal as the strategies they adopted in the negotiations over the original proposal. This is true of both large and small member states, new and old, Euro-skeptic and more European-oriented states, and was true despite the same negotiators representing each state.⁹⁸ Therefore, despite any *ex ante* predispositions toward cooperative or non-cooperative bargaining that were held by the member states or the individual negotiators, the bargaining strategies of all member states were more cooperative in nature when bargaining over the proposal characterized by issues with offsetting distributional patterns than they were when bargaining over issues without offsetting distributional patterns.

8.7.2 Interest-Based Logic

The comparative nature of this case and the presence of variation in state bargaining strategies also allows for an evaluation of the relative explanatory power of the interest-based logic argued here to underpin states' choice of bargaining strategy versus a norm-based logic laid out in observable implication 2.

First, the interview evidence provides support for the argument that the difference in the distributional patterns of issues and an interest-based evaluation of these issues largely drove the

⁹⁸ This is true with the exception of two member states.

willingness to offer concessions in the second phase of negotiations. “There was a feeling among the minority in the Council that would have wanted the directive to go further, that at the very least, [the screening] mechanism would compensate for the other failings of the directive – and in particular, for the removal of the country of origin principle” (Interview with Deputy Permanent Representative 2007). The payoff from winning on the screening issue was therefore *large enough* to compensate for not winning on the underlying principle that these member states were willing to make concessions on this issue. For the less liberal member states, the payoff from winning on the underlying principle was large enough to compensate for giving on the screening issue. Therefore, the relative importance of the issues and a consideration of relative payoffs (i.e., “compensation”) was a key factor driving the willingness of the member states to offer concessions in this phase of the negotiations.

However, because this cooperative behavior is consistent with the norms argued to govern bargaining in COREPER, as in the Battery Directive case, this evidence alone is not enough to weigh the relative explanatory power of the interest-based logic against the normative argument. However, the *variation* in strategies across the two bargaining stages does allow for an analysis of the relative power of these two driving factors. In particular, the norms of COREPER were present in both the first and second stages of bargaining over the directive. In addition, with the exception of two states, the same individual with largely the same degree of socialization to the COREPER norms was bargaining in both phases. However, despite this constancy in norms and socialization, the bargaining strategy adopted by each state was different in these two bargaining interactions.

Because the norms of cooperative dynamics remained constant while the member states’ bargaining strategies changed, these norms cannot explain this variation (Przeworski and Teune

1970). In contrast, the distributional patterns of the issues structuring the bargain *did* change between these two stages of bargaining. Furthermore, the changes in state bargaining strategies are consistent with the changes predicted by the theoretical argument presented here, given the change in the distributional patterns between the two phases of bargaining.

Together with the evidence of an interest-based logic driving bargaining strategies as demonstrated by the interviews conducted, this case highlights the explanatory power of the argument posited here relative to an explanation based on the impact of norms alone. This study of the Services Directive negotiations as a whole therefore provides important evidence in support of the dissertation's theoretical argument.

8.7.3 Conclusion: From Here

Together, the analysis of the bargaining interactions on the Services Directive presented here and the Battery Directive in the previous chapter provide support and empirical evidence of the dissertation's theoretical argument. The case study to follow, which examines the Framework Decision on Combating Racism and Xenophobia, will also be used to demonstrate this theoretical argument at work. However, it has several complicating factors that were not present, and did not need to be dealt with, in the Services Directive and Battery Directive analyses.

The negotiations on the Racism Framework Decision will therefore also be used to begin to demonstrate how this argument can be extended to understand and analyze "more difficult" cases. In other words, the case analysis to follow is important not only for evaluating the theoretical argument, but also for its ability to demonstrate and highlight important steps that can be taken to apply this theory to international bargaining outside of the EU setting. Chapter 10

will then build upon this discussion, summarizing the argument and findings of this project, and laying out paths for future extensions of this research agenda.

9.0 FRAMEWORK DECISION ON COMBATING RACISM AND XENOPHOBIA

The negotiation among the EU member states over the “Council Framework Decision on Combating Racism and Xenophobia” is an interesting case to analyze in the study of EU decision-making. This was a decision aimed at harmonizing the criminal law regarding racist and xenophobic acts across the EU member states. In principle, all member states agreed upon the goal of combating racism and xenophobia. However, this Framework Decision touched upon issues of national Constitutional law, freedom of expression, and freedom of the press. Despite general agreement on the goals of the dossier, it was an extremely sensitive issue and this case was characterized by long and tough negotiations among the member states.

In addition, this case is important because it has several complicating factors that move the analysis beyond the simple and more straightforward cases in the previous two chapters. In particular, though the EU is largely characterized by a relatively exogenous source of the issue structure, the negotiations on this Framework Decision have characteristics which deviate more than the previous two cases from the ideal type, exogenous issue structure that characterizes the model used to build the theoretical argument. This does not mean that the theory posited in the dissertation cannot apply to this type of case, but the application is more complicated. An analysis of this case using the theoretical argument therefore not only allows for an additional evaluation of the argument itself; it also demonstrates how this theory can be applied and used to

analyze international bargaining settings where the issue linkage structure may be altered as part of states' bargaining strategies.

9.1 BACKGROUND ON RACISM AND XENOPHOBIA FRAMEWORK DECISION

In 1996, the member states of the European Union agreed upon a measure aimed at combating racism and xenophobia across the EU member states (96/443/JHA). This agreement was governed by the legal framework of the Maastricht Treaty which specified that judicial cooperation among member states should be governed by “joint actions.” The joint action legal framework for this 1996 Racism agreement was a highly flexible one, specifying that member states should work to coordinate their actions based on Council Joint Actions, but no real enforcement mechanisms accompanied this stipulation (Europa Glossary 2007b). This legal flexibility and the lack of enforcement mechanisms were argued to be important factors in allowing an agreement to be reached at that time. “We could agree upon and adopt a text then [largely] because some member states had no real intention to actually implement that text.” Even with that flexibility, however, the negotiations over that joint action were said to be “pretty difficult” (Interview with participant in the Joint Action negotiation 2007).

Under the Treaty of Amsterdam, the legal framework within which judicial cooperation was carried out changed from Joint Actions to Framework Decisions, allowing the EU, for the first time, to take “real legislative action” in this area. “With the entry into force of the Treaty of Amsterdam, these new instruments under Title VI of the EU Treaty (police and judicial cooperation in criminal matters) have replaced joint action. More binding and more authoritative, they should serve to make action under the reorganised third pillar more effective.

... They are binding on the Member States as to the result to be achieved but leave the choice of form and methods to the national authorities” (Europa Glossary 2007a).

In line with the Joint Action adopted in 1996, the Commission made a follow-up proposal⁹⁹ in November 2001 “to take *legislative* action to combat discrimination” (COM/2001/664: 4, emphasis added), as the right to make true EU “legislation” in this area was delegated to the EU through the move to Framework Decisions in the Treaty of Amsterdam. Once agreed, this new EU legislation would put the agreement into a different legal framework – one which could actually necessitate changes in the laws of the member states. Officially, a Framework Decision is not legally binding on the EU member states. However, through decisions passed by the European Court of Justice (ECJ), Framework Decisions were granted “some teeth.” According to the case law of the Court of Justice, member states are obliged to have national law be in conformity with Framework Decisions. “In its judgment of 16 June 2005, in Case C-105/03, *Pupino*, the Court of Justice concludes that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union” (C-105/03). Therefore, while these decisions do not have a direct effect on the member states, they have what is referred to as “direct applicability” or “indirect effect.”

Given this new legal framework, the Commission’s proposal presented the possibility to the member states that they may be required to change their own national law to make it in compliance with the agreement that resulted from the negotiations over this Framework Decision. “The novelty in relation to the Joint Action is that instead of the choice to incriminate these forms of conduct or to derogate from the principle of dual criminality, an obligation is

⁹⁹ Though it does not have the *sole* right of legislative initiative in this area, the Commission can (and often does) present legislative proposals, as it did in this case.

imposed on Member States to take steps to punish those forms of conduct as criminal offences” COM/2001/664: 6). Because of the potential obligation to punish specific conduct as criminal offenses that were not considered criminal in current national legislation, each member state desired that the resulting agreement reflect their own national legislation as it currently stood.

9.1.1 Sources of Contention

The most interesting facet of this case is that all member states supported this Framework Decision in principle. All member states are against, and desire to combat, racist and xenophobic behavior. This support for the overall principle of the dossier was made explicitly clear by every member state representative interviewed, as well as by all outside participants in these negotiations. However, despite this broad support for the ideas underpinning this Framework Decisions, the road to agreement was long and drawn-out, and was characterized by very hard negotiations among the member states. The difficult negotiations which characterized this Framework Decision are contrary to expectations based on this general support for the dossier among the member states.

However, several factors added to the possibility of being required to change national law, creating a high degree of conflict over this Framework Decision. First, the decision was subject to a unanimity decision rule, and thus each member state had the possibility to veto the agreement. “[That meant] that we [had] to make amends for what may be seen to be minority views, but still those minority views can block the whole decision-making process” (Interview with negotiation participant 2007).

Second, within the EU there are twenty-nine different legal traditions in the twenty-seven member states (if you consider that Northern Ireland and Scotland within the UK have different

legal systems from those of England and Wales). These twenty-nine traditions needed to be accommodated in the final text for all member states to be able to agree.

Third, related to these different legal traditions, the definition of what constitutes a criminal act driven by racism and xenophobia is an issue that can touch upon constitutionally defined areas such as freedom of expression (i.e., “speech”) and freedom of the press. These areas were highly sensitive to member states whose legal traditions and/or constitutional laws are deeply rooted in the protection of such freedoms. The ability of the EU, through its own legislation, to take precedence over and encroach upon these types of areas raised significant concerns for several member states about the sovereignty of the state in the EU setting. As described by one participant in the negotiations, “Once you get into fields like the one concerning criminal law in general, or criminal procedural law – fields that touch upon Constitutions – you are in very difficult fields that are very much to the heart of sovereignty” (Interview with Framework Decision participant 2007). The protection of national constitutions from the encroachment of EU legislation and the defense of these constitutionally-protected areas was a central concern of several member states in approaching these negotiations.

Fourth, because this decision was in a field that touched upon constitutions, freedom of expression, and freedom of the press, not only governments, but also national parliaments and NGOs were very much attuned to what was happening in the Council (Interviews 2007). This Framework Decision was therefore not only important and a focus of member state governments, but it was also a highly politicized and important dossier within the EU as a whole.

Finally, an explicit provision related to mutual legal assistance among the member states was also an important issue in the negotiations. However, in contrast to the highly politically-based positions regarding the definition, the opposition to this provision was largely based on

legal, technical positions related to the need for consistency and clarity across EU legislation as a whole. This will be discussed in significantly more detail below.

9.1.2 Overview of Negotiations

The Commission presented its proposal for a Council Framework Decision on Combating Racism and Xenophobia in 2001. Negotiations carried on for several years, with little forward movement. The only major break in these negotiations was that the relation of religion to this Framework Decision was clarified, with the understanding that acts aimed at different religions would be included in the decision's scope only if that religious group could be considered a race covered by the racism definition. Negotiations came to a standstill in 2003 with the main issues still unresolved.

In 2005, the Luxembourg Presidency reopened negotiations on this issue with the goal of reaching agreement under their Presidency. The proposals that they presented for agreement were aligned with the main issues as they were set by the Commission proposal, and thus did not alter the issue structure from the original negotiations. The negotiations during this phase of bargaining on the Framework Decision were characterized by the member states being inflexible in their positions. At the end of the Luxembourg Presidency, the Framework Decision was vetoed by Italy, and an agreement was not reached.

The next several Presidencies did not put this issue on the agenda. Therefore, no additional negotiations or meetings took place on this dossier until Germany put it on the agenda during its Presidency in the first half of 2007. Given its history with issues of racism and xenophobia, Germany had a great deal of interest in achieving an agreement on this issue during

their Presidency. In line with this interest, Germany altered the issues linked together to structure the bargain, deviating from the original Commission proposal.

In addition, an issue was linked to this phase of negotiations by the three Baltic States – Estonia, Latvia, and Lithuania – and Poland. Given the historical link made to the Holocaust and World War II in the text, these states desired that a link also be drawn to the Stalinist crimes committed during this time period. This was something that was central to their history, as the Nazi crimes were for much of Western Europe.

The negotiations during this phase of negotiations, though still highly sensitive, were characterized by more concession-offering on the part of most member states than was offered during the negotiations over the original Commission proposal or the proposals of the Luxembourg Presidency. Finally, at the end of the German Presidency, after much tough negotiating, an agreement was reached by the member states.

The final two phases of the negotiations on this directive will be examined in this chapter. The first phase of negotiations from 2001 up until the Luxembourg Presidency was more amorphous in nature, and the majority of individuals involved in those negotiations were no longer present in the EU institutions at the time of the data-gathering effort of this project. In addition, the majority of the headway was made in the negotiations which took place during the Luxembourg and German Presidencies. These two phases are therefore the focus here. The phase of negotiations under the Luxembourg Presidency in 2005 is labeled the “Luxembourg Phase.” Similarly, the final phase of negotiations in 2007 is labeled the “German Phase.” The remainder of this chapter is dedicated to analyzing these negotiations as they relate to the theoretical argument presented by this project.

9.2 CHANGES IN THE BARGAINING SPACE

The coding of the distributional patterns of the issues set by the Luxembourg Presidency proposals (which retained the issue structure set by the Commission proposal) and the German Presidency proposal rely on a measurement of the bargaining space in each case, and an assumption that the bargaining space remains constant across each bargaining interaction that is examined (i.e., across each bargaining game). The bargaining space itself is impacted by the particular set of issues over which states bargain and the interests of the bargaining actors on those issues (i.e., their position and willingness to give). In order to have confidence in the measure of the main independent variable, then, an important feature of this case analysis is to demonstrate that in each bargaining interaction, the central issue and the interests of the member states on those issues remained largely constant.

Across the bargaining interaction which took place under the Luxembourg Presidency, three main issues dominated the negotiations – the broad definition of racist and xenophobic acts that should be criminalized across the EU member states, exemptions to this definition, and a mutual legal assistance provision. When this set of issues was altered during the German Presidency, the structure of the bargaining game among the member states changed. Following Lake and Powell (1999), a new game structure implies that a new bargaining interaction is taking place. Thus, the bargaining interaction that took place over the Framework Decision on Combating Racism and Xenophobia under the German Presidency is treated here as a separate bargaining interaction to be analyzed. Therefore, though the set of issues over which the member states bargained may have changed across different bargaining interactions, *within* each bargaining game – both within the bargaining interaction under the Luxembourg Presidency and

under the German Presidency – the main issues over which the states bargained were constant. A change in issues therefore does not impact the bargaining space within each case.

The evidence gathered from interviews with the member state representatives involved in the negotiations on this Framework Decision demonstrates that the member states' positions and willingness to give on each issue remained largely constant across each bargaining interaction (Interviews 2007).

However, two important exceptions exist to this overall continuity in issues and positions that must be considered. First, four member states – Lithuania, Latvia, Estonia, and Poland – linked an issue to the bargaining interaction which was not present in the Commission/Luxembourg proposals or the proposals presented by the German Presidency. In addition, Italy had a change in government over the course of the negotiations on this Framework Decision. With the change from the center-right Berlusconi government to the center-left Prodi government, Italy's positions on the issues remained largely constant, but their flexibility (i.e., linked give) on the issue of defining racist and xenophobic criminal acts increased significantly.¹⁰⁰ In other words, Italy became much more flexible on this issue after the change in government (i.e., their linked give increased).

The timing of both of these changes, however, were such that they do not present a problem for using the bargaining space as a way to measure the offsetting distributional patterns of the main issues under the Luxembourg and German Presidencies. In particular, the change in government and linked give of Italy occurred between the two phases of the negotiations, and thus directly corresponds to the break in negotiations between the Luxembourg and German Presidencies. This change therefore does not alter the bargaining space during each of the

¹⁰⁰ See (Inside Europe 2007).

bargaining interactions for which the bargaining space is used to measure the offsetting distributional patterns of the issues. Similarly, the change in issue structure brought about by the linkage of the Stalinism issue to this bargaining interaction took place fairly early in the German Presidency and was an issue throughout this phase of negotiations. Given that this linkage largely corresponds to the timing in which the German Presidency set the new issue structure through its proposals, it can be treated as an additional issue which structured the bargaining interaction under the German Presidency.¹⁰¹

9.3 LUXEMBOURG PHASE: DISTRIBUTIONAL PATTERNS OF KEY ISSUES

The key issues in the negotiation were set by Articles 1, 8.1, and 8.2. Article 1 defined offenses concerning racism and xenophobia that all member states would be required to make punishable. These offenses included “publicly inciting to discrimination, violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin” as well as “publicly condoning, denying or grossly trivialising crimes of genocide.” Defined in this way, Article 1 set out a broad definition of punishable criminal acts, and included in this definition the possibility that acts of expression alone, such as the denial of the Holocaust, would be considered punishable offenses.

Linked to this broad definition, Article 8.1 laid out the option for member states to limit their punishment of these acts. For purposes of analysis, this is labeled the “exemptions” issue.

¹⁰¹ If this linkage did not correspond to the change in issue structure under the German Presidency, following the logic of Lake and Powell (1999) which treats any new game structure as a new bargaining game, when this linkage took place, the bargaining interaction which followed would be treated a new bargaining game with a new issue structure.

In particular, Article 8.1 provides for the possibility that a member state could exclude from criminal liability acts that are “carried out in a manner unlikely to incite to violence or hatred” or “where the conduct is not threatening, abusive or insulting.”

Finally, because of the possibility for member states to exempt certain criminal acts from punishment, Article 8.2 called for “mutual legal assistance” among the member states.¹⁰² In other words, it was an “exemption to the exemptions” (Interview with Permanent Representative 2007), limiting the ability of member state to refuse to provide mutual legal assistance to another member state for the acts they exempted from punishment based on Article 8.1. This issue will be described in more detail in the discussion of the member states’ positions on this issue.

Together, these three issues dominated negotiations among the member states, and are thus treated as the issues which structured their bargaining interaction under the Luxembourg Presidency.

9.3.1 Luxembourg Phase: Relative Exogeneity of Issues

The inclusion of these issues was driven by the overall goal of the Commission which underpinned this proposal. “The Commission is presenting a proposal for a Framework Decision, aimed at approximating the laws and regulations of the Member States regarding racist and xenophobic offences” (COM/2001/664: 6).

Because the Commission’s aim was to “approximate” current national law, a broad definition was needed to cover the laws of member states that took a more stringent line toward racist and xenophobic acts. For example, some member states such as Germany and Austria had

¹⁰² In some versions of the Framework Decision, the mutual legal assistance issue is laid out in Article 8.3.

criminalized the denial of the Holocaust. To create a directive that approximated these laws, a broad criminalization definition was necessary. However, to create a dossier that also approximated the current national law in states that had not criminalized these types of acts, exemptions from this broad definition were necessary. This definition and exemptions therefore resulted from the goal of the Commission, rather than from the bargaining interaction of the member states.

In line with this goal, the Commission had a second objective – “to improve and encourage judicial cooperation by removing potential obstacles” (COM/2001/664). A Commission report had found that despite the adoption of the Joint Action, “some difficulties have still been experienced regarding extradition and mutual legal assistance” in line with the goal of coordinating and harmonizing member states’ approach to dealing with racist and xenophobic behavior. The mutual legal assistance provision was therefore included to deal with this second goal of the Commission.

Furthermore, the inclusion of the mutual legal assistance provision was largely exogenous to member state interactions and arose for a very interesting reason – changes in technology. When the Joint Action Combating Racism and Xenophobia was adopted in 1996, the internet was not a widely used medium that was part of “everyday” life in the EU. However, by 2001 when the Commission put forward its proposal for a Framework Decision, the internet had become a widely used medium for communication, entertainment, and commerce. In addition, as the Commission argued, it provided “a relatively cheap and highly effective tool for racist individuals or groups to spread hateful ideas to an audience of thousands if not millions” (COM/2001/664: 5). The possibility that the internet could be used to disseminate racist and xenophobic acts from one member state with less restrictive laws to another that had more

restrictive laws was therefore raised by this change in technology. The mutual legal assistance provision was partly designed to deal with and prevent this possibility (Interview with member state representative 2007).

Given that the Commission's goals and interests, as well as changes in technology, drove the structure of the Commission proposal, the issues which then structured the bargaining interaction among the member states can be treated as largely exogenous to that bargaining interaction.

9.3.2 Luxembourg Phase: Positions and Linked Give of Member States

In approaching this negotiation, two main 'camps' or 'coalitions' of member states were largely present. All member states desired to limit racist and xenophobic behavior, as well as placed importance on freedom of speech and freedom of the press. They differed, however, on the relative weight these two issues received in the drafting, interpretation, and application of national law.

On one side of the negotiations were states that prohibited a wide range of racist and xenophobic acts in their national legislation. This coalition included Austria, Germany, Belgium, France, Luxembourg, and Spain.¹⁰³ On the other side of negotiations were member states for which the emphasis on freedom of expression in their own national legislation and legal tradition limited their willingness to criminalize acts in such a way that might limit or impinge upon these freedoms. The central actors in this coalition were the United Kingdom, Ireland, and the Scandinavian countries

¹⁰³ For public discussion of these positions, see (e.g., Bilefsky 2007; Randoux 2007).

On the issue of defining punishable racist and xenophobic acts, the member states that had national legislation in place that criminalized a broad scope of racist and xenophobic acts supported the broad definition laid out by the proposal. These member states were very inflexible on this issue. “Clearly we have a strict law, and we did not want to loosen that law” (Interview with Permanent Representative 2007). In addition, several member states desired to expand the scope of the definition as it related to “racism,” rather than types of behavior. Several of them wished to include factors such as discrimination based on “inherited status,” “class discrimination,” and “ideological discrimination” in the definition (7275/05). Though not as extreme in wanting to criminalize a wide variety of racist *behavior, per se*, this position was related to creating a more expansive definition, and is thus coded as a small distance from the camp desiring a very broad definition.

Member states such as the UK that did not have strict legislation and that were concerned about the implications of this broad definition for freedom of expression and freedom of the press wanted to narrow the scope of this definition. However, because of the inclusion of the possibility to exempt certain behavior from punishment, their red line on this issue could include a fairly wide definition. They were thus coded as having a large linked give on the definition issue. In addition, some member states were largely “in the middle” on this issue and did not have a strong position toward either of the extremes. Member states’ positions and linked give are indicated in Figure 9.1.¹⁰⁴

¹⁰⁴ To protect the confidentiality of the non-publicized positions of the member states, the figures in all the case studies are coded using randomly assigned labels in place of member state names. Appendix D provides general characteristics of the states assigned particular labels.

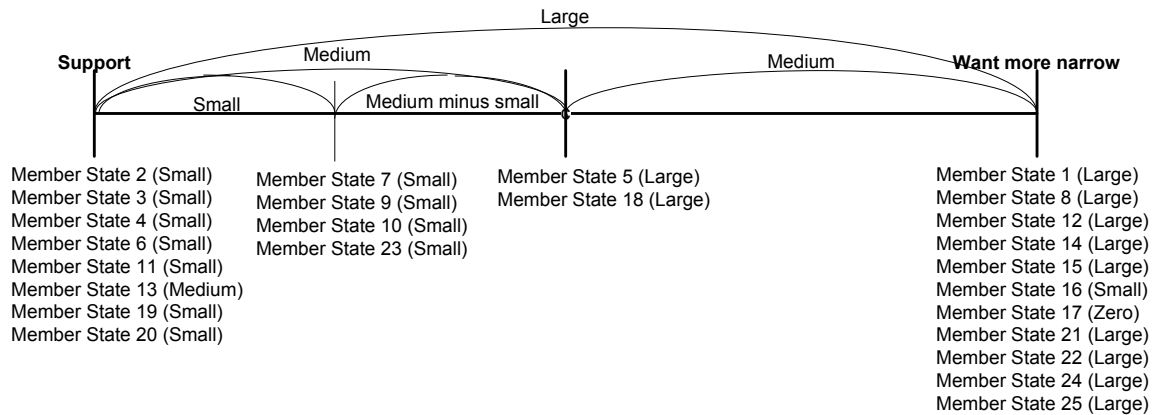


Figure 9.1. Issue Space: Wide Criminalization Definition

The UK, Ireland, and the Scandinavian countries, as well as several other member states that opposed the broad criminalization definition due to fears that it would impinge on their citizens' freedom of expression, needed the possibility to exempt certain behavior from punishment. They therefore supported the inclusion of this exemption clause and were very inflexible in that position. In particular, they needed to have behavior exempted which did not "incite to violence or hatred" (or other similar stipulations) to prevent acts of speech alone such as Holocaust denial from being criminalized.

In contrast, the majority of member states that supported the broad criminalization definition were opposed to the possibility for member states to exempt these behaviors from criminalization. These member states, the most outspoken member of which was France, desired a document similar to their own national legislation that would be effective both in substance and in its harmonization of the criminalization of racist acts across the EU. However, because that interest was largely represented by the broad definition, they had a wide degree of flexibility on the exemptions issue.

Several member states that supported a broad criminalization definition were less extreme in their position. These countries, including Germany, while desiring effective legislation, had a central interest at stake in the *symbolic* nature of the legislation. This central interest in the legislation itself, gave these member states a less extreme position on the exemption issue.¹⁰⁵ These states were thus not necessarily opposed to the inclusion of exemptions if it would help move the legislation forward. These positions and linked give are indicated in Figure 9.2.

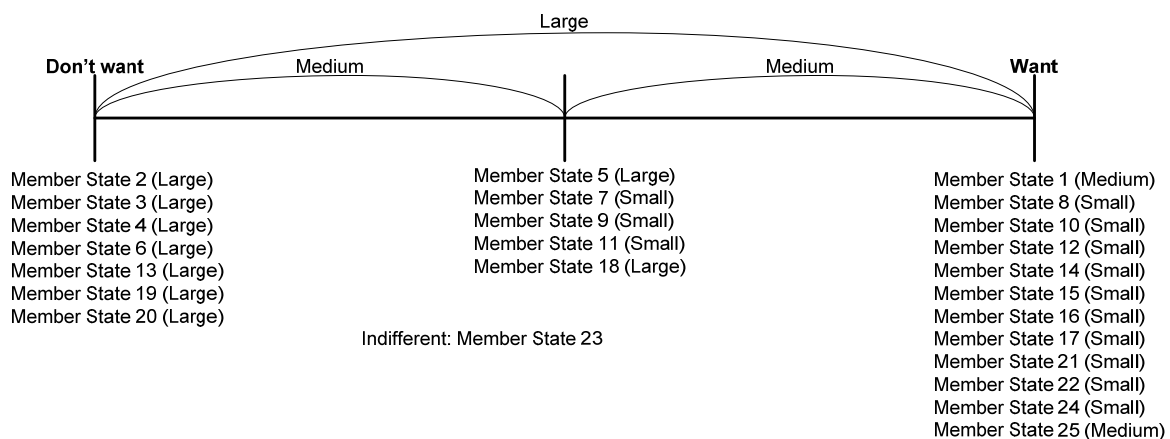


Figure 9.2. Issue Space: Exemptions

The positions of the member states on the mutual legal assistance clause, however, did not align with these two broad coalitions. Mutual legal assistance is a legal concept and has been the basis of much EU legislation and cooperation in the Justice and Home Affairs realm. It is rooted in the idea of extradition, and specifies that extradition between member states can be

¹⁰⁵ This was evident in interviews with multiple member state representatives and in public statements such as German Justice Minister Brigitte Zypries claims that the decision is “an important political signal” (Randoux 2007).

refused based on the fact that the crime for which extradition is requested is not a crime in the member state in which the individual is located. That country could therefore refuse the request for extradition based on the lack of “dual criminality” – the criminality of the act in both member states involved. The provision related to mutual legal assistance in the Racism Framework Decision was designed to prevent member states from being able to refuse extradition based on dual criminality for any criminal behavior covered by the (broad) criminalization definition laid out in Article 1 (even if another member state exempted some of that behavior from punishment based on Article 8.1).

For legal reasons, most member states strongly opposed the inclusion of this provision in the Racism dossier. At the same time that this Framework Decision was being negotiated in the field of criminal law, the EU was working on building up the concept of “mutual legal recognition” and doing away with “mutual legal assistance” in the area of judicial cooperation. Two key components of this effort were the European Arrest Warrant and European Evidence Warrant. The European Arrest Warrant was agreed upon in 2002 and entered into force on 1 January, 2004, and the European Evidence Warrant was agreed to in 2006. Both pieces of legislation did away with the need for “extradition” in the standard sense, specifying that the surrender of individuals or evidence would be based on the “mutual recognition” of an order issued by one state by other judicial authorities across the member states.

In doing so, these central pieces of legislation did away with the “dual criminality” requirement for thirty-two categories of offences, one of which was racism and xenophobia. In particular, this new legislation required that “whenever a crime from one of these thirty-two categories is punishable in the ‘issuing’ state [the state requesting evidence or an individual] with at least a three year maximum possible sentence, the ‘executing’ state [the state ‘sending’ the

person or evidence] cannot refuse because of lack of dual criminality” (Interview with JHA Working Group representative 2007).

Therefore, for two reasons related to legal clarity and consistency, the majority of member states wanted this provision deleted. Though these mutual legal recognition dossiers and the Racism dossier were all legislation in justice and home affairs matters, they were in separate sectors of this broad issue area. The European Arrest Warrant and European Evidence Warrant were part of the judicial cooperation field while the Racism dossier was in the field of criminal law. Harmonizing criminal law (i.e., the definition of criminal offences) and judicial cooperation (rules governing the relation between member states’ judicial systems) are two quite separate fields, and are even dealt with by separate Working Groups in the Council structure.

Given the overlap in scope between the mutual legal recognition and Racism dossiers, there was concern that including this measure in the Framework Decision on Racism and Xenophobia would create problems for the application of the European Arrest Warrant and European Evidence Warrant – central pieces of EU legislation in the field of judicial cooperation. Many other categories of criminal offenses covered by the mutual legal recognition dossiers in the judicial cooperation field were also dealt with at the EU level in criminal law instruments. However, these other instruments did not include provisions related to judicial cooperation, as the Framework Decision on Racism and Xenophobia did through its inclusion of Article 8.2. “We therefore didn’t think it was appropriate to include special rules for a minority group of offenses where we haven’t done the same in instruments on other subjects such as ... counterfeiting, terrorism, etc.” (Interview with member state representative in Criminal Law Working Group 2007).

For these reasons, the majority of member states opposed the inclusion of the mutual legal assistance provision. In addition, because many member states opposed the broad criminalization definition, the requirement that they turn over individuals or evidence based on the broad definition created difficulties for them. As reported by the UK's House of Lords' Selection Committee on the European Union, "The obligation to provide assistance remains, in the view of the Government, too wide—it would require UK authorities to search for and seize material that is not illegal in the UK" (UK House of Lords Selection Committee to the European Union 2003). The member states in opposition to this dossier were led largely by the UK, and included the member states that opposed the broad criminalization.

However, even member states such as Austria that had strict criminalization opposed the inclusion of this provision for the central legal reasons related to the mutual legal recognition dossiers, as described above. Overall, given that their opposition was based on clearly defined legal, technical issues, the flexibility of member states that held this position was extremely limited. Their linked give measures are coded accordingly.

Despite these legal arguments, for several member states that opposed the exemptions, the mutual legal assistance clause was a key provision that they wanted included in the text. There was a concern among these member states that the exemptions allowed for in other member states could be used to circumvent the stronger legislation in their own state. In particular, in the new mutual legal recognition texts, a maximum penalty of at least three years was required to circumvent the dual criminality requirement for extradition. However, the racist and xenophobic acts exempted through Article 8.1 (i.e., those that do not "incite to violence or hatred") were too minor to require a sentence of three years. Therefore, member states such as France and Germany that criminalized these acts in their own national legislation were

concerned that racist and xenophobic acts could be committed in another member state via means such as the internet and distributed within their borders without penalty. In other words, without Article 8.2, there was a concern that an individual in the UK could distribute racist material in France (that would constitute a criminal act if committed in France) without penalty because it was not considered criminal by the exemptions to the punishment of these acts that the UK was allowed to adopt via Article 8.1.

The mutual legal assistance provision in this Framework Decision would prevent this by eliminating the possibility that other member states could refuse to turn over individuals or evidence for any acts included in Article 1 based on the lack of dual criminality, even if that member state had exempted that behavior from criminalization via Article 8.1. Because of the importance of preventing the circumvention of their own, more strict national laws, these member states – and France, in particular – were extremely inflexible on this issue. Accordingly, their linked give is coded as “low” or “zero.” These positions and linked give are illustrated in Figure 9.3.

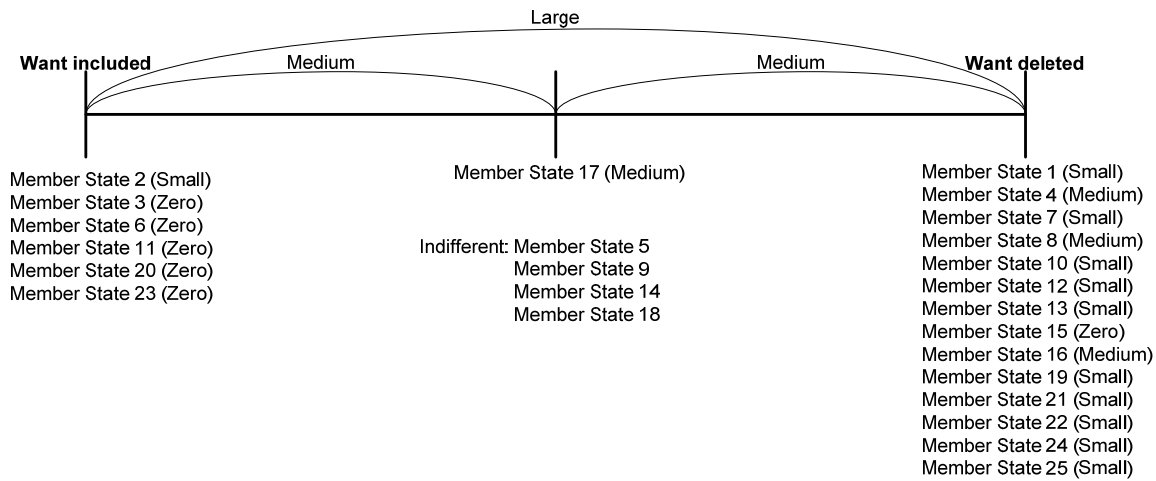


Figure 9.3. Issue Space: Mutual Legal Assistance Clause

9.3.3 Luxembourg Phase: Distributional Patterns Not Offsetting

Using the coding rules laid out in Chapter 5, the positions and linked give of the member states described above can be used to analyze the distributional patterns of the criminalization definition, exemptions, and mutual legal assistance issues.¹⁰⁶ In particular, this coding demonstrates that the issues presented by the Commission and Luxembourg proposals for the Framework Decision on Combating Racism and Xenophobia did not have offsetting distributional patterns.

Member state representatives' interpretations of the relationship between the key issues in the negotiations provide additional evidence that these issues did not have distributional

¹⁰⁶ The nine measures of offsetting distributional patterns are valued as follows: D1/G1 = -0.065, D1/G2 = -0.045, D1/G3 = -0.041, D2/G1 = -0.056, D2/G2 = -0.036, D2/G3 = -0.032, D3/G1 = -0.054, D3/G2 = -0.038, D3/G3 = -0.034.

patterns that were offsetting. For the UK and other states that did not support the broad definition laid out in the proposal, the exemption issue could largely offset this broad definition. In particular, the threat to freedom of speech and freedom of the press which underpinned these member states' opposition could be avoided by being able to exclude acts that were purely speech acts from criminalization (i.e., acts which did not "incite to violence").

However, a broad definition alone could not offset the inclusion of these exemptions for several states that opposed them. For those states such as France and Germany, the mutual legal assistance clause could offset the inclusion of these exemptions by preventing the potential to circumvention of their own national legislation – something the broad definition alone could not prevent. The mutual legal assistance provision was very important to them, in addition to the broad definition.

However, for the member states opposed to the mutual legal assistance clause, this was also an important issue because of their concern for legal certainty, clarity, and consistency across all legislation in the EU. Given this legal basis for opposition to the mutual legal assistance issue, the other issues included in the Framework Decision related to racist acts could not offset these interests. Without this provision, however, member states such as France that opposed the exemptions could not accept exemptions and, without the exemptions, member states such as the UK could not accept the broad definition.

Thus, the mutual legal assistance issue was important to member states on both extremes, and the interests at stake on this issue could not be offset by the other issues in the Framework Decision. This is reflected in the coding of this variable.

9.4 LUXEMBOURG PHASE: MEMBER STATES' STRATEGIC CHOICES

Given that the central issues laid out in the proposal for a Framework Decision on Combating Racism and Xenophobia did not possess offsetting distributional patterns, the theory here predicts that when bargaining over this proposal, the member states would not truthfully reveal their interests and willingness to give on the issues, and would adopt largely non-cooperative types of bargaining strategies. The following two sections analyze these strategic choices in the bargaining interaction over the original Commission proposal.

9.4.1 Luxembourg Phase: Member States' Communication of Interests

In these negotiations, the positions themselves and the underlying interests of the member states were largely made public in the media, and were thus largely known to the other member states.¹⁰⁷ The only information that would be left for the member states to truthfully reveal was the exact nature of their bottom lines – i.e., precisely how much they were willing to give on the issues. In general, this information was not truthfully revealed by the member states in the bargaining under the Luxembourg Presidency.

Italy, however, was very open about its bottom line and their complete unwillingness to accept the definition of racism to be combated by the Framework Decision, much less the broad criminalization definition in relation to this. In line with this truthful revelation, Italy had put forward a document in 2003 which laid out the bottom line definition that they were willing to accept (7814/03). This red line carried over into the negotiations in the Luxembourg phase, and

¹⁰⁷ For example, (Bilefsky 2007; Castle 2007; Inside Europe 2007; Randoux 2007).

this document was repeatedly cited by Italy as the bottom line of what they would be willing to accept on this issue. All other member states were unwilling to accept this bottom line definition (Interview with negotiation participant 2007).

Aside from Italy, the lack of the truthful revelation of their bottom lines was a key feature of the overall bargaining strategies of the other member states involved in the negotiation. Italy's truthful revelation provided important information to the other member states that Italy was not going to be willing to accept the proposal in its current form. Given this expectation, the majority of member states did not expect that reaching an agreement was possible in this phase of the negotiations. They therefore did not find any need or incentive to reveal or discuss their willingness to give on the various issues, because "we knew it wouldn't come down to that" (Interview with member state representative 2007).

Interestingly, another form of the strategic misrepresentation of interests took place as well. Some member state representatives that were interviewed argued that all member states were willing to accept the agreement as it stood with the exception of Italy, and that Italy's veto alone blocked the agreement. This was also the view widely publicized in the media (e.g., Castle 2007; Inside Europe 2007). However, the majority of participants in these negotiations argued that, "Despite the veto of Italy, in reality, [this proposal] would almost certainly not have been agreed upon under the Luxembourg Presidency" (Interview with member state representative 2007). In particular, several Permanent Representatives and Working Group representatives argued that they did not think that their own state would have agreed to the dossier as it was reflected in the Luxembourg proposal. This claim was made most particularly regarding the UK and the Scandinavian countries. "But as it happened, Italy blocked it, so no one else had to worry too much" (Interview with member state representative 2007).

In reality, then, member states' claim that they would be willing to agree on the proposal was a strategic misrepresentation of their true interests – preventing them from “taking the blame” in the media for the lack of an agreement. “[We could] hide behind the one country that was prepared to stand up and be blamed for failure” (Interviews 2007). In reality, however, they were not truthfully revealing their bottom line and the fact that the proposed agreement did not meet that bottom line on at least one of the issues. As another participant in the negotiations argued, “Those member states that were not happy with 8.2 in particular, they never really gave up 8.2. It was presented as that it was only Italy, but they were a sort of scapegoat. And if Italy, for some reason, suddenly said in the Council, ‘We accept this,’ I think then the others would have come out from the woodwork and they would not have accepted 8.1 or 8.2, depending on their stance – and 8.2 was the big problem there” (Interview with negotiation participant 2007).

As the theoretical argument predicted, then, the majority of member states did not truthfully reveal their willingness to give on the issues. However, this lack of truthful revelation took a somewhat different form than what might be expected. Unlike the Battery Directive and the two phases of the Services Directive, there were clearly other factors at work that also helped to drive the lack of truthful revelation – in particular, Italy's openly hard position, combined with their threat and ability to veto the agreement.

While the connection of member states' strategic misrepresentation of their interests to the issue linkage structure alone cannot be made simply by examining this case, the findings are consistent with the predictions of the theory presented here. In addition, the actual bargaining strategies adopted by member states more clearly demonstrate the logic that despite claiming toward the end that they could accept the agreement, the member states were also unwilling to

make concessions on the particular issues. Taken together, then, these findings are largely consistent with the predictions of the model.

9.4.2 Luxembourg Phase: Bargaining Strategies

Interestingly, even though several member states claimed a willingness to accept the agreement as it stood, they also did not engage in the willing offering of concessions during these negotiations.

In particular, Italy was very strict on the definition of racism and was unwilling to accept the broad criminalization definition as it was laid out in the text, unlike the other member states who opposed this broad definition for reasons of freedom of speech. A fear existed in the government that, based on this broad definition of racist acts, certain members of the government could be prosecuted for past behavior. For Italy, therefore, the possibility of exceptions to the criminalization definition could not overcome the problems this broad definition would create within their government (Interviews 2007). When bargaining, Italy was thus openly unwilling to concede on this issue in any way, threatened to veto and then did veto the agreement under the Luxembourg Presidency.¹⁰⁸ These tactics were specifically designed to extract concessions, and thus represent the most non-cooperative type of bargaining strategy, as laid out in the coding rules presented in Chapter 6.

The other member states, while not as extreme, engaged in largely non-cooperative types of bargaining strategies as well. States such as the UK and Sweden that opposed the broad criminalization definition demanded concessions regarding the protection of freedom of

¹⁰⁸ See (Inside Europe 2007).

expression. These states were completely inflexible and unwilling to concede on this issue – and made it clear that they required either a more narrow definition or a wide array of exemptions in order to be able to accept the agreement. “We wouldn’t move. There was complete unanimity in our Parliament that we were not going down a road that would undermine our constitutional freedom of speech, and the freedom of print. That was simply not possible. And it was the same for [a number of other countries]” (Interview with Permanent Representative 2007).

In this phase of negotiations, member states such as France that supported the broad criminalization definition were unwilling to accept a more narrow definition. “Our own national legislation restricts Holocaust denial. We wanted to get text that was similar” (Interview with Permanent Representative 2007). These member states did offer a small degree of concessions, expressing their willingness to accept some exemptions. However, this concession was directly linked to the inclusion of the mutual legal assistance provision and broad criminalization definition in the text. At the same time, member states opposed to Article 8.2 were unwilling to concede from their position and accept its inclusion.

Overall, a lack of concession-offering therefore characterized this phase of negotiations. “There was no readiness [on the part of the member states] to change, as you may have in other cases” (Interview with member state representative 2007).

The general findings are thus in line with the theory presented here, albeit with the interesting twist at the end of this phase of bargaining in which member states claimed they would be willing to agree, knowing that no agreement could or would be reached. As expected in any real-world situation, the case specifics highlight several complicating factors. However, despite these complications, findings consistent and supportive of the theory presented here are also evident. While Italy’s veto was clearly a factor in other member states’ strategic

misrepresentation toward the end of the negotiations in their claims of willingness to accept the agreement, the impact of the issue structure can be seen in the lack of the truthful revelation of their bottom lines and the lack of concession-offering during the bargaining interaction itself.

In addition, the structure of the proposal itself was highlighted by several member states as driving the unwillingness to offer concessions in this phase of negotiations. “France didn’t like the exceptions at all; the UK didn’t like the structure” (Interview with member state representative 2007). Overall, “the member states could not live with the [set of] issues presented, so negotiations broke down” (Interview with member state representative 2007).

The general lack of concessions during this phase of negotiations over issues with distributional patterns that were not offsetting is consistent with the argument and predictions of the theory presented here. This is further supported by the observation by negotiation participants that these bargaining strategies stemmed directly from the issue structure. Also consistent with the theoretical predictions here, these bargaining strategies followed the lack of truthful revelation regarding their bottom lines on these issues.

Interestingly, in this case, this non-cooperative bargaining, characterized by an unwillingness to exchange concessions was then followed by a claim by the member states that they would be willing to agree to the proposal, knowing that it would be vetoed by Italy. This therefore highlights the importance of understanding the strategic setting and of examining the actual bargaining *strategies* and the *process* of bargaining interactions, rather than simply the observed outcome. What might appear as a largely cooperative interaction, with the exception of Italy, masks the difficulties faced in these negotiations and the hard bargaining positions of the member states as a whole.

9.5 GERMAN PHASE: DISTRIBUTIONAL PATTERNS OF KEY ISSUES

After negotiations broke down under the Luxembourg Presidency, the Framework Decision on Combating Racism and Xenophobia was not taken up for discussion and negotiation until Germany took over the Council Presidency at the beginning of 2007. In their Presidency Program, Germany made public its desire to return focus to this dossier within the Council. “The Presidency plans to resume the stalled negotiations on drafting a framework decision on combating racism and xenophobia and to drive the project forward. The goal must be to achieve a minimum level of harmonization in the penal provisions of the EU Member States, particularly with regard to criminal liability for disseminating racist and xenophobic ideas” (German Presidency Program 2007, 19). In the Presidency, Germany’s key interest, therefore, was to achieve an agreement.

In preparation for these negotiations, leading into their Presidency, several informal meetings were held in various forums with France and the United Kingdom – the two largest member states on opposite sides in these negotiations. In addition, several other member states were contacted by the upcoming German Presidency in order to obtain information about their interests and positions on this dossier (Interview with member state representatives 2007).

Building on this information-gathering effort, the German Presidency presented a new proposal with a modified issue structure. Rather than a broad criminalization definition with exceptions, the proposal was restructured to include a very narrow criminalization definition, laying out “common minimum standards” for criminalization. Because it criminalized only the most serious of offenses related to racism and xenophobia, simple speech acts were no longer included. In addition, these more serious criminal acts covered by the new definition all carried a sentence long enough that the stipulations in the mutual legal recognition dossier would

prevent a member state from being able to refuse to hand over an individual based on the lack of dual criminality (i.e., a sentence greater than three years). This therefore eliminated the need of the member states that supported Article 8.2 to have it included in this version of the Racism Framework Decision. This new definition allowed for the removal of Articles 8.1 and 8.2 - the exceptions and mutual legal assistance provision. Replacing this were “qualifications” to this narrow definition – stipulating that member states could choose to go beyond these minimum standards in their own national legislation.

In this case, however, the issue structure over which the member states bargained was not set by the new German proposal alone. In particular, several member states linked the issue of Stalinism to these negotiations. Given the clear references to the Holocaust and World War II that were present in the text, the three Baltic States – Lithuania, Estonia, and Latvia – along with Poland, wanted the inclusion of references to other crimes that took place during that time period – the crimes of Stalin.

The issue structure during this phase of negotiations therefore consisted of two main issues set by the German proposal – a narrow criminalization definition and qualifications to that definition. The third main issue was brought into the negotiations by the Baltic States – the issue of including Stalinist crimes in the scope of the dossier.

9.5.1 German Phase: Relative Endogeneity of Issue Structure

An interesting feature of this phase of the negotiations on the Framework Decision on Combating Racism and Xenophobia is that the issue structure itself is not completely exogenous to the bargaining interaction. The issues laid out by the German proposal resulted partly from the information they gathered regarding interests of the member states involved in the bargain.

More clearly endogenous to the bargaining interaction, the Stalinism issue was included as part of the bargaining strategies of the Baltic states and Poland.

This lack of exogeneity of the issue structure presents a complicating factor in the application of the theory to this case. However, it is important to examine this case, despite these complications, to demonstrate how the theoretical argument might be used to analyze cases such as this, and the extent to which it can help explain bargaining when the issue linkage structure can be altered by states. This is therefore an important step in this project's overall analysis, and demonstrates how the theory could be used to analyze cases of international bargaining outside the EU where endogeneity of the issue structure is more of an issue. The relative endogeneity of this issue structure will therefore be a factor carefully considered in the analysis that follows.

9.5.2 German Phase: Positions and Linked Give of Member States

Member states such as France that supported the criminalization of a broad spectrum of racist and xenophobic behavior under the original proposals preferred that broad definition to the narrow one now reflected in the modified German proposal. However, the inclusion of the possibility to go further beyond this base definition gave these states a large degree of flexibility on the definition itself. The UK, Ireland, and the Scandinavian countries that had opposed the broad criminalization definition supported the new narrow definition because the behavior included in the definition no longer referenced acts that were simply speech acts such as Holocaust denial, but rather were more serious in nature. Because of their concerns regarding freedom of speech and protection of national constitutions and legal traditions, these member states were very inflexible in their position not to expand the definition. The positions and

linked give of the member states on the new criminalization definition are illustrated in Figure 9.4 below.

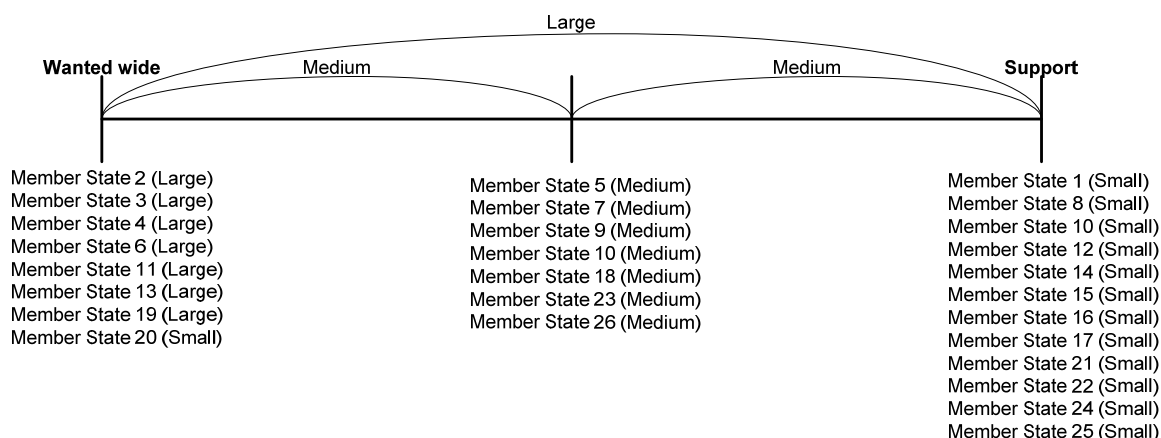


Figure 9.4. Issue Space: Narrow Criminalization Definition

Regarding the qualifications issue, the possibility to go further was an important facet of this modified dossier for states such as France and Germany whose own national legislation criminalized Holocaust denial and other such speech acts. The flexibility of these states on the qualifications issue was therefore very limited in order to protect their national law. France was even less flexible than most other member states in this camp. In particular, France desired not only for these qualifications to allow the possibility for member states to go beyond the definition, but to also qualify this Framework Decision with its narrow criminalization as merely a “first step” in combating racism and xenophobia. The implication of this would be that additional EU legislation should follow. The qualifications issue was one on which France was not flexible, desiring EU legislation that was as substantively effective as possible.

The UK, Ireland, and Scandinavian countries were not opposed to the possibility of other member states going further. Their interest was merely in protecting their own national legislation and legal traditions, not impinging on the legislation of others. Their flexibility on this issue was therefore large enough that they could accept the position of the most extreme states on the other side of the negotiations. They are therefore coded as having a linked give of “all” on this issue. On both the criminalization and qualification issues, some member states took a position in the middle, and are coded as such. The positions and linked give of the member states on the qualifications issue are illustrated below in Figure 9.5.

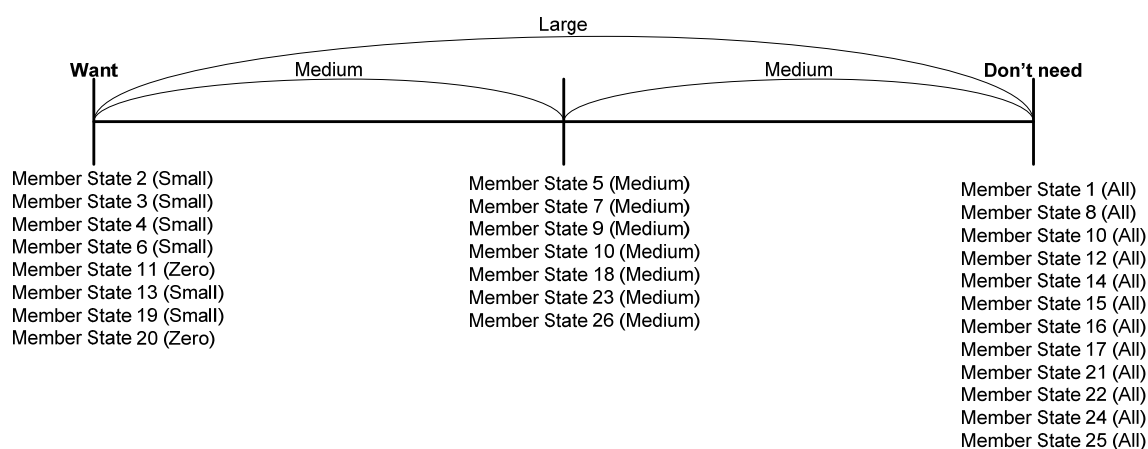


Figure 9.5. Issue Space: Qualifications to Definition

The Baltic States that linked the issue of Stalinism to these negotiations had a large interest in seeing this issue included in the criminalization definition. For these member states, it was somewhat of an East-West issue. For Western Europe, the Holocaust was an important piece of their history. For the Baltic States, though, this was not as central, while the crimes of Stalin were an important part of their history. Given that there was a clear reference to the

Holocaust in the text, “We wanted to see the crimes of Stalin treated in the same way” (Interview with Estonian member state representative 2007) – i.e., “put on equal footing” (Interview with Latvian member state representative 2007). This issue gained national attention in these Baltic States, and several of their governments received clear mandates from the national Parliament that Stalinism must be included within the Framework Decision for an agreement to be acceptable (Interviews 2007). Their linked give on this issue was therefore fairly limited. However, they had some flexibility in exactly *how* this issue would be included, and therefore their linked give is coded as medium on this issue.

On the other side of the negotiations, the majority of member states opposed the inclusion of Stalinist crimes in the text. The most oft-cited reason for this opposition to its inclusion was one of legal clarity. The crimes of Stalin were not committed based on a racial basis, but rather for political reasons. In other words, “the Communist crimes were not conducted on the basis of ethnicity, but on the basis of social status” (Interview with member state representative 2007). Many member states therefore opposed the inclusion of these crimes because there was not any “legal scope” for their inclusion in the text. Furthermore, there was no clear internationally-agreed-upon definition of these crimes, as had been created in the London Agreement from 1945 regarding the crimes of the Holocaust. “Because it’s not defined, legally speaking, we wouldn’t [legally] know what we are talking about [if we included it]” (Interview with Permanent Representative 2007).

For this reason, these member states opposed the inclusion of Stalinist crimes in the Framework Decision. In particular, they had a clear red line that this issue could not be included within the scope of the behavior criminalized in the text. However, they were not against its possible inclusion in other forms which did not raise these legal concerns. Given this particular

red line, these member states were coded as having a “medium” degree of linked give on this issue.

A second reason behind this opposition that was discussed by a few of the member states’ representatives was related to concerns over the EU’s relations with Russia and the problems that including Stalinism in this document could raise in those relations. This period of negotiation coincided with a Russian ban on Polish meat imports, and Estonia was at odds with Russia over the removal of the “bronze soldier” statue.¹⁰⁹ Because of these issues, the impact on relations with Russia that would arise from the inclusion of Stalinist crimes in this Framework Decision was something widely discussed in the media at this time. This issue was argued to “be in the back of [the] minds” of some member states, and thus adding additional weight to their opposition to incorporate Stalinism in this dossier (Interviews 2007). However, it never arose explicitly in the actual negotiations on this issue (Interviews 2007). Despite its discussion in the media, the central reasoning underpinning this position was not primarily a concern with Russian relations, but rather a legal reasoning, as described above. These positions are illustrated below in Figure 9.6.

¹⁰⁹ In early 2007, tensions arose between Estonia and Russia over the Estonian government’s plans to relocate a monument to the Red Army from World War II (a “bronze statue”) that was located in downtown Tallinn. The upper house of the Russian legislature voted unanimously in favor of a resolution condemning the relocation. The bronze statue of a Red Army soldier was a memorial from the “Soviet-era” of Estonia’s history, and was construed as a monument to the Red Army as liberators of Estonia from German Nazi occupation. To Russia and ethnic Russians in Estonia, the removal of the statue was a “destruction of the memory of the [Soviet Russian] liberators”; to Estonians, the monument “glorif[ied] the [Soviet] occupation” of Estonia (Finn 2007; Nowak 2007). The removal of the monument made already tense relations between Estonia and Russia even more conflictual, igniting violent demonstrations between ethnic Russians and Estonians.

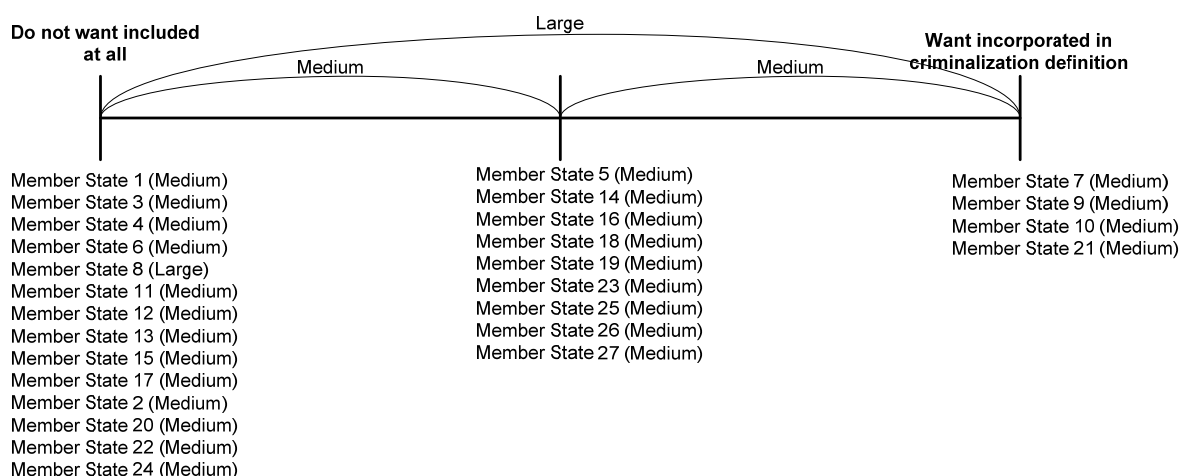


Figure 9.6. Issue Space: Stalinism Issue

9.5.3 German Phase: Distributional Patterns of Key Issues

Overall, the distributional patterns of these three issues were offsetting, as indicated in the coding of this variable.¹¹⁰ That this is the case is consistent with the relative valuation of the issues among the member states. For the UK, Ireland, and the Scandinavian countries – states concerned with the protection of the freedom of expression – the definitional issue was the most important in the negotiations. For France, Germany, Luxembourg, Belgium, Austria, and Spain – states whose national legislation reflected a broad criminalization of racist and xenophobic behavior – the issue of including qualifications allowing member states to “go further” and treating this decision as merely a “first step” was the most important issue. For the Baltic member states and Poland, the most important issue was including a reference to the Stalinist crimes within the Framework Decision. Thus, the different groups of member states each had a

¹¹⁰ The nine measures of offsetting distributional patterns are valued as follows: D1/G1 = 0.180, D1/G2 = 0.189, D1/G3 = 0.199, D2/G1 = 0.180, D2/G2 = 0.189, D2/G3 = 0.199, D3/G1 = 0.180, D3/G2 = 0.189, D3/G3 = 0.199.

large interest in winning on different issues, the key defining feature of issues with offsetting distributional patterns.

9.6 GERMAN PHASE: MEMBER STATES' STRATEGIC CHOICES

In order to conduct this analysis, the issue structure is treated as exogenous and causally prior to the adoption of state bargaining strategies that temporally followed. Once the issue linkage took place and set new parameters for the bargaining game, a new bargaining game was created (Lake and Powell 1999). The strategies in this new game are the focus of the analysis here. Therefore, the period of negotiations in which the issue linkage actually took place is a separate bargaining game from the prior Luxembourg Presidency phase as well as from the bargaining interaction that followed the issue linkage. After analyzing this last phase of bargaining interaction, the phase of the negotiations in which the issue linkage took place will be discussed.

9.6.1 German Phase: Member States' Communication of Interests

During this last phase of negotiations, a key feature of the bargaining among the member states was the communication of their red lines to the other member states. In particular, a large degree of informal bilateral work took place between member states on opposite sides of the negotiation. In particular, informal meetings between France and the UK were common during this phase of the negotiations. Within these informal meetings, “red lines” and possible ways to “meet in the middle” across the two main issues – the definition and qualifications – were discussed (Interview with UK representative 2007). In other words, the positions and the extent

of their willingness to give on these issues was openly discussed and communicated to the German Presidency.

Red lines on the Stalinism issue were also shared among the member states. Again, this revelation of interests took place largely in informal meetings between the member states on the two extremes. As one member state representative from a Baltic state reported, “Our instructions, agreed in the Parliament, said that we [could not] back off from our textual proposals [to include Stalinism in the criminalization definition]. So it made it difficult for us to negotiate on the table. But we tried to convey the message to different counterparts and tried to [find a solution] that would meet our expectations so we could take this agreement and show it [to our capital] as ‘this is the way out’” (Interview with Baltic member state representative 2007). In addition, the member states opposed to the inclusion of Stalinism were clear about the legal reasoning behind their position and the need for a clear legal document.

This truthful revelation and discussion of the member states’ interests and bottom lines are consistent with the predictions of the theoretical argument presented here. In addition, the theory predicts that, given the offsetting distributional patterns of these issues, not only should states discuss their interests and willingness to give on certain issues, but they also are expected to adopt more cooperative types of bargaining strategies. These bargaining strategies are discussed in the next section.

9.6.2 German Phase: Bargaining Strategies

Overall, in this phase of negotiations, the EU member states adopted largely cooperative bargaining strategies. Member states such as France that had national legislation which criminalized a broad array of racist and xenophobic acts willingly offered a significant degree of

concessions in this phase of negotiations, expressing their willingness to accept the limited criminalization definition as the basis for the agreement. “We didn’t want to water down the dossier too far, but overall we were very flexible” (Interview with Permanent Representative 2007). In addition, most member states in this group – including countries such as Belgium and Luxembourg – willingly offered these concessions in the interest of reaching an agreement, rather than based on purely *quid pro quo* reasoning. “Because the Union is a Community of values and we felt that fighting racism and xenophobia are necessary common values that we must try to defend, we were supporting the Presidency’s proposal, [which included the narrow definition], to get the file to move” (Interview with Permanent Representative 2007). These strategies therefore represent the most cooperative form of bargaining, as defined in Chapter 6, and are coded as such.

France, however, though more cooperative than in the previous negotiations, was less cooperative than Belgium and Luxembourg. In particular, France expressed a willingness to offer concessions on the definitional issue, but tied this offer to the fact that not only should member states have the possibility to go further in their own national legislation, but that this dossier must be explicitly labeled as merely a “first step” in combating racism and xenophobia, with the expectation that future EU legislation would follow. Their concession was therefore tied to the receipt of a concession from the UK, Ireland, and Scandinavian countries on the qualifications issue – expanding the qualifications made to the dossier in this form.

The UK, Ireland, and the Scandinavian countries also engaged in the willing offering of concessions. Though these concessions were not as significant as the other member states made by accepting the more narrow definition, these states were willing to accept several qualifications to the narrow definition, allowing other member states to go further. In addition, “there was

some discussion about whether it was the first step, whether it was the first and last step, or whether it was a step towards anything, or would there be more steps. We conceded that they could have the word ‘first’” (Interview with UK representative 2007).

The bargaining strategies focused on the Stalinism issue were less cooperative in nature. In particular, the Baltic States and Poland adopted largely non-cooperative bargaining strategies. In particular, they fought very hard to get Stalinism included in the text. The strategies adopted by these member states were not, however, the most competitive type of bargaining strategy. In particular, individuals representing these member states in the negotiations worked to prevent the use of veto threats and other concession extracting tactics, instead trying to approach the negotiations as cooperatively as possible, given their limited possibility to be flexible on this issue (i.e., their limited linked give). “We want[ed] the recognition, but we weren’t particularly attached to the way it was done. So we were quite flexible on *how*, but we were not flexible on *what*. So we were fairly constructive in the whole negotiation process, and we tried to keep ourselves so as not to say “veto”, etc. (Interview with Baltic member state representative 2007). These states even publicly signaled that they “were unlikely to block a deal” (Castle 2007).

In the end, the concession that the Baltic States and Poland received from the other member states was that the Council made a declaration condemning these crimes, and mandating the European Commission to begin looking into these crimes to put forward a future Framework Decision for negotiation among the member states. In response to this concession offer, the Baltic States and Poland were willing to move from their position requiring that Stalinism be explicitly included in the text of the Framework Decision itself, accepting simply having a Council declaration. As one Baltic state representative argued, “And I think accepting the declaration [as a concession] came with the acceptance that there wasn’t any scope. We looked

into the issue to see if xenophobia would in any way cover the social alien – the alien to a regime. And we came to the recognition that racism and xenophobia don't refer to the Communist crimes in material law. We kept a red light on [this issue] – to say that we want the recognition, but we weren't particularly attached to any way it was done. And this declaration was a compromise about how to do that" (Interview with Baltic state representative).

Overall, these negotiations under the German Presidency, while still very sensitive, were more cooperative in nature than the negotiations in previous phases of this dossier. "Everyone was prepared to make a compromise to the extent possible; though everyone had very strong feelings on this issue" (Interview with Permanent Representative 2007).

9.7 ENDOGENEITY AND ANALYSIS

The analysis above partitioned the bargaining interaction among the member states under the German Presidency into two bargaining games, treating the interaction that followed the setting of the new issue structure by the Baltic States and Poland as a new bargaining game characterized by a new issue structure. In other words, the parameters of the game changed, and it was thus analyzed as a new game (Lake and Powell 1999).

Importantly, any international bargaining interactions in which issue linkage is a strategy adopted by states can be broken down in this way. The theory presented here predicts and explains state bargaining behavior *given* an issue structure. Therefore, when a new issue structure arises, a new bargaining game begins and the bargaining strategies that follow can be analyzed and explained by understanding the distributional patterns of the issues over which they

are bargaining. This analysis provides an important demonstration of how this can be carried out.

However, the actual *linkage* of issues as a state bargaining tactic cannot be analyzed within this particular theoretical framework. This is because the issues over which states bargain are treated here as a part of the (institutional) structure of the bargaining game, and thus as exogenous to their bargaining interaction. In short, the theory in its current form cannot explain the linkage of the Stalinism issue by the Baltic States. An important next step in this research program is to expand the theory here in order to incorporate the possibility of issue linkage as part of a state's bargaining strategy. This important next step will be carefully discussed in Chapter 10.

9.8 CONCLUSION: COMPARISON OF TWO BARGAINING PHASES

A comparison of the bargaining interactions on this Framework Decision highlights the role that the distributional patterns of the issues had on the bargaining that took place among the EU member states. In both phases of negotiation, the member states involved remained constant. Furthermore, with the exception of only a couple of states, even the particular individual representing the state in the negotiations within COREPER was the same across both phases of the negotiation (i.e., the Permanent Representative was the same). In addition, the bargain itself was highly public and politicized in both phases of negotiation, and the unanimity voting rule and institutional EU setting within which the bargain took place were constant. Finally, in both cases, the member states were engaged in bargaining over legislation designed to combat racism and xenophobia.

In general, these two cases of bargaining were very similar in nature. The main difference lay in the characteristics of the central issues that structured the bargaining among the member states. The issues set by the original Commission proposal and carried over to the Luxembourg Presidency proposals did not have offsetting distributional patterns, while the issues set during the German Presidency were largely offsetting.

Based on these issue structures, consistent with the predictions of the theory presented here, the bargaining strategies of the member states were largely non-cooperative in the bargaining that took place during the Luxembourg Presidency. In contrast, the bargaining strategies overall were more cooperative in the bargaining that took place during the German Presidency. This provides general support for the central hypothesis of this study.

9.8.1 Observable Implication 1

When bargaining under the German Presidency, the issue structure of the bargain was different. In particular, the definition was altered, allowing for the mutual legal assistance issue – an important point for member states on both sides – to be removed. This altered issue structure then had offsetting distributional patterns, while the one under the Luxembourg Presidency did not. Based on this, the theory presented here predicts that all member states, despite any predispositions toward cooperative or non-cooperative bargaining should be observed adopting more cooperative strategies under the German Presidency.

Consistent with observable implication 1, despite the differences that existed in states *ex ante* willingness to offer concession, almost all member states adopted more cooperative strategies when bargaining over the German proposal than when bargaining over the Luxembourg proposal. In particular, with the exception of the three Baltic States and Poland, all

member states – states both large and small, both Euro-skeptic and European-oriented, and both new and old – adopted bargaining strategies that were more cooperative (or in one case at least as cooperative) when bargaining over the German proposal than when bargaining over the Luxembourg proposal.

9.8.2 Observable Implication 2

Furthermore, consistent with the second observable implication of the theoretical argument, the logic which drove the adoption of cooperative bargaining strategies was largely inconsistent with the norms of bargaining argued to characterize member state interactions in the Council of Ministers structures. The main concern which drove these interactions was not necessarily the “appropriate” strategies to adopt, but rather the strategies that would best fulfill member state interests. In particular, the main concern reported by the majority of member state representatives was their interest in protecting their own constitutions, law, and legal traditions. In other words, the main factor driving their bargaining strategies was an interest in “not having to change our national laws.”

In addition, member states whose constitutions were thought to be at risk in the negotiations over this dossier had a further incentive to prevent their government from adopting legislation that directly contradicted their constitutional law. As one member state representative reported, “The most important thing for us was to make sure that whatever framework decision was adopted by the European Union, it would not compel the member states to legislate against their own constitution. Otherwise, we would have faced a situation similar to

what the Germans confronted regarding the European evidence warrant.¹¹¹ The German delegation agreed to it, and then the government was sued. And this is what was threatening [our] government as well” (Interview with member state representative 2007). These interests, rather than norm-based arguments, were the main arguments cited by member state representatives as driving their behavior.

Furthermore, similar to the Services Directive, the norms of COREPER remained constant across these two phases of bargaining interaction. Also, with the exception of only a couple member states, the representatives taking part in the negotiation and thus their particular degree of socialization to the norms of COREPER remained constant as well. The bargaining strategies adopted by member states, however, *changed* across these two bargaining interactions, as did the issue structure. Thus, because the normative environment and socialization to those norms remained constant, they can largely be eliminated as possible explanations for the change in member state bargaining strategies.

Together with the interview-evidence citing the driving concern for member state interests which underpinned their bargaining strategies, the evidence provides support for the interest-based logic argued to underpin the hypothesized relationship.

¹¹¹ Mamoun Darkazanli, a Syrian-born German, suspected of being an Al Qaeda operative, had been held in custody for extradition to Spain under the warrant procedure. He appealed, and the Constitutional Court of Germany ruled that the German national law applying the European Arrest Warrant did not respect fundamental rights and procedural guarantees and so was contrary to the German Constitution (EurActiv 2005). Poland’s highest court has also struck down the law (The Economist 2006).

9.8.3 Observable Implication 3

Finally, the truthful revelation argued to play an important role in the relationship between the distributional patterns of the issues which structure a bargain and the bargaining strategies of the EU member states is supported in this case. Under the Luxembourg proposal, member states largely “focused on their own problems” and “not so much on finding solutions.” In other words, they largely repeated their positions and difficulties; not as much time was spent trying to find solutions by discussing the extent of their willingness to give. However, in examining this case, this lack of truthful revelation of member states’ bottom lines and willingness to give on the issues cannot be exclusively linked to the bargaining structure, because it was widely known that no agreement would be possible due to the veto they expected from one member state over the definition of racist and xenophobic actions.

The causal mechanisms find more clear support in the negotiations under the German Presidency. In this case, member state representatives largely recognized that the issues in the German proposal provided a potential solution to their multiple problems and, therefore, discussed their bottom lines and willingness to give in order to try to come to a solution. “Rather than being a framework decision criminalizing all racist and xenophobic behavior, it was now a framework decision on combating the most serious forms of racism and xenophobia in the criminal law. That meant that it could be set at a threshold that was appropriate and acceptable to us and a lot of other member states, whilst not undermining the positions held by countries that do go further in their own law. It was not in any way undermining their national positions or suggesting that they were somehow wrong to be going further or that we were deficient by not going as far. It was therefore something on which we thought we could all agree” (Interview with member state representative in Working Group 2007).

9.8.4 Conclusion: From Here

Despite the general support for the theoretical argument made here, it should be noted that the second phase of the negotiations here suffers from endogeneity. These findings, while demonstrating the general causal logic, should therefore not be taken as a significant “test” of the argument. In particular, cases such as this necessitate the lag of the dependent variable included in the statistical test in order to control, as much as possible, for this endogeneity in the actual testing of the argument. In addition, as will be discussed later, this also points to possible avenues for future extension and expansion of the theoretical argument.

Overall, this case provided additional support for the theoretical argument presented in Chapters 3 and 4, and demonstrated how this argument could be used to better understand and analyze bargaining interactions – even those that suffer from endogeneity. However, this case, in particular, also highlighted limitations that the theoretical argument faces. While the discussion of the bargaining under the German Presidency demonstrated how the argument could be used to analyze and understand bargaining interactions even when states linked outside issues to the bargaining interaction, the theory cannot explain and predict the *use* of issue linkage as a part of states’ bargaining strategies. While the theory is therefore an important first step in understanding the relationship between issue linkage and the bargaining strategies member states adopt, there are still avenues to expand and develop the theoretical argument. These extensions will be discussed in Chapter 10.

10.0 CONCLUSION

The preceding chapters addressed an important and unanswered question in the study of international cooperation – why, and under what conditions, will states adopt cooperative types of bargaining strategies rather than the non-cooperative strategies they are often assumed to employ? More particularly, how does the institutional structure within which states bargain impact this decision? To analyze this question, Chapter 1 introduced the concept of “cooperative bargaining” to capture the cooperative nature of the bargaining strategies of states. Building on the standard definition of international cooperation, and conceptualized in a way that could be empirically measured in a consistent way, cooperative bargaining was defined as the degree to which the willing making of offers that are Pareto-superior for states not making the offer characterizes the overall strategy of a state engaged in a bargaining situation. More simply, it refers to the degree to which a state’s bargaining strategy consists of willingly offering concessions to other states.

Using a theory-building model to analyze the conditions under which cooperative bargaining will be adopted as a bargaining strategy by states, this project argued that the institutional (game) structure within which states bargain has an important impact on the bargaining strategies they adopt. In particular, the more offsetting are the distributional patterns of the issues linked together to structure states’ bargaining interaction, the more cooperative their bargaining strategies will be, holding all else constant.

To test this argument, Chapter 4 connected this theory to bargaining interactions among member states in the EU, deriving a testable hypothesis and observable implications of the theoretical argument at work in EU bargaining. Chapter 5 and 6 then laid out coding rules for the main variables of interest and Chapter 6 reported the results of a statistical analysis of this argument on a sample of bargaining interactions in the EU. Chapters 7 through 9 then carefully analyzed these cases, highlighting the theorized causal mechanisms at work. Together this empirical analysis provides support for the argument made here, while at the same time highlighting important paths for future work in this research program.

10.1 OVERVIEW OF EMPIRICAL FINDINGS

10.1.1 Central Hypothesis

The central hypothesis posited in this study argues that, holding all else constant, the more offsetting are the distributional patterns of the issues over which states bargain, the more cooperative their bargaining strategies will be. Directly testing this hypothesis, Chapters 5 and 6 laid out coding rules for these central concepts – offsetting distributional patterns and cooperative bargaining – and Chapter 6 presented a statistical analysis to assess their relationship. This analysis demonstrated that not only do issues with more offsetting distributional patterns have a positive and statistically significant effect on the cooperative nature of state bargaining strategies, but that this effect is substantively significant as well.

Building on this statistical analysis, the case studies in Chapters 7 through 9 highlighted the relationship between the issue linkage structure of each case and the bargaining strategies

adopted by EU member states when bargaining over those issues. In particular, in the Battery Directive, the second phase of the Services Directive, and the negotiations that took place over the Racism and Xenophobia Framework Decision under the German Presidency, the distributional patterns of issues were largely offsetting. Following the predictions of the theoretical argument made here, in these bargaining interactions, the member states' bargaining strategies were largely cooperative in nature, and the willing offering of concessions was a key feature of the bargaining interaction.

Conversely, the issues being negotiated in the first phase of the Services Directive negotiations and in the negotiations on the Racism and Xenophobia Framework Decision under the Luxembourg Presidency did not have offsetting distributional patterns. Again, following the predictions of the theoretical argument, in these bargaining interactions, the member states' bargaining strategies were largely non-cooperative in nature. In particular, a key feature of member state bargaining strategies in these negotiations was the adoption of concession-extracting tactics by several member states – characterizing the most non-cooperative type of bargaining strategy, as defined here.

Together, the statistical analysis and case studies provide important statistical and substantive evidence of the hypothesized relationship between the issue linkage structure of a bargain and state bargaining strategies.

10.1.2 Observable Implication 1

Supporting this central hypothesis, the theoretical argument predicted that the distributional patterns of issues should exert this hypothesized effect on state bargaining strategies regardless of the effect that a state's characteristics may have on their predisposition toward more or less

cooperative types of behavior. The statistical analysis provided preliminary evidence of this observable implication by controlling for several factors that may impact EU member states' predispositions toward cooperation – the power of the state in the EU decision-making structure, whether or not the state had agreed to give up its national currency and adopt the Euro, whether the member state had recently joined the EU, and whether the member state was Scandinavian (with the particular cooperative political culture they are argued to have). The hypothesized relationship between the issue structure and state bargaining strategies was statistically and substantively significant, even when controlling for these different member state features.

The case studies were used to provide further evidence of this important observable implication of the theoretical argument. In particular, the two-phased negotiations on the Services Directive and the Framework Decision on Combating Racism and Xenophobia allowed for a direct comparison of each member state's strategy in the two phases of negotiation.

In the Services Directive, the bargaining interaction over the original proposal was characterized by issues with distributional patterns that were not offsetting, while the bargaining interaction over the modified proposal was characterized by issues that did have offsetting distributional patterns. Across these two phases of negotiations, several key characteristics of the bargain remained constant (the QMV decision-rule, the high degree of politicization, the economic issue area, etc.). Providing important evidence of this observable implication, *all* member states¹¹² adopted bargaining strategies that were more cooperative (or at least as cooperative) in nature in the second phase of negotiations than the strategies they adopted during the first phase of negotiations. Therefore, despite any *ex ante* predisposition toward a certain

¹¹² This is true, with the possible exception of one member state, whose bargaining strategy was less cooperative by one value in the 12-category dependent variable measure. However, using the 6-category measure, this member state's strategy remained the same (i.e., was at least as cooperative).

type of bargaining strategy, following the predictions of the argument, each member state adopted a strategy that was more cooperative (or at least as cooperative) in the bargain characterized by offsetting distributional patterns than they did in the bargaining interaction over the same dossier, but characterized by distributional patterns that were not offsetting.

The two phases of negotiation over the Framework Decision on Combating Racism and Xenophobia demonstrate the same finding. In the phase of negotiations under the German Presidency, structured by issues with offsetting distributional patterns, the bargaining strategy of all but four member states was more cooperative (or at least as cooperative) in nature than the bargaining strategy adopted in the negotiations under the Luxembourg Presidency and structured by issues with distributional patterns that were not offsetting.

Together, these findings provide important support for the hypothesized relationship between the distributional patterns of the issue linkage structure of a bargain and the bargaining strategies adopted by states. In particular, these findings demonstrate that despite the characteristics states may have that may impact their overall willingness to adopt cooperative bargaining strategies, bargaining over issues with more offsetting distributional patterns leads them to adopt more cooperative bargaining strategies.

10.1.3 Observable Implication 2

The second and third observable implications were designed to provide support for the causal mechanisms argued to underpin the hypothesized relationship described above. Observable Implication 2 was designed to evaluate the interest-based logic that was implicitly assumed in the theory-building model and argument, and to weigh this logic against the potential norm-based logic which may drive the adoption of cooperative bargaining strategies.

The discussion and analysis of the Battery Directive in Chapter 7 demonstrated an important difficulty in evaluating the relative explanatory power of interest-based and norm-based logic in driving the adoption of cooperative bargaining strategies. When member state representatives adopt cooperative bargaining strategies, it is not possible to tease out the impact of norms of reciprocity and compromise (i.e., an overall “Community Method” approach) and more interest-maximizing logics that are derived from the structure of the bargaining game. It is therefore important to obtain *variation* on this central dependent variable in order to tease out the relative explanatory power of these different driving factors.

Drawing on all three cases (i.e., the Battery Directive, Services Directive, and Framework Decision on Combating Racism and Xenophobia), both cooperative and non-cooperative types of bargaining strategies can be observed being adopted by the member states. Thus, despite the normative setting of COREPER (which is argued to push states toward the adoption of cooperative types of tactics) being held largely constant, the bargaining strategies adopted by the member state representatives varied. The bargaining strategies that these member state representatives adopt therefore does not always follow the norms of compromise and reciprocity argued to characterize this institutional setting. In addition, these changes can even be seen across negotiations on the *same* dossier.

This is not to say that these norms do not exist, or that they do not play an important role in impacting the bargaining among the EU member states. However, what the analysis in the Chapters above does show is these norms cannot explain the variation that is present in member state bargaining strategies within COREPER. An interest-based logic was shown to be present in all of the cases. In addition, this logic was shown to underpin member states’ choice of cooperative bargaining strategies as well as the adoption of non-cooperative bargaining

strategies. As demonstrated in the descriptions in Chapters 7 through 9, the interest-based argument is better than the normative explanation in accounting for the variation in the bargaining strategies adopted.

Analyzing his role as a member state representative, one Deputy Permanent Representative summarized this interest-based logic as driving the different types of bargaining strategies adopted in EU negotiations.

It is a matter of being effective. I mean, I said that [compromising and being flexible] is a norm, but when I recommend [these strategies] to my capital, it's not because it's a norm or because I want [us] to be seen as 'good guys,' or to be nice to the others. I recommend this because that is the most effective way to pursue [our member state's] interests. I see myself as having the task to maximize [our member state] influence in Brussels. And in order to do that, I have sometimes to make recommendations in terms of what we do. But those recommendations do not reflect any wish on my part to be nice to the others or to be abiding with certain unwritten rules. They reflect the way to maximize our influence (Interview with Deputy Permanent Representative 2007).

The interest-based logic which is argued to lead member state representatives to adopt more cooperative types of bargaining strategies in bargaining interactions structured by issues with offsetting distributional patterns, but less cooperative strategies in bargaining interactions structured by issues with distributional patterns that are not offsetting receives important empirical support in the case analyses presented here. In addition, this logic was weighed against a logic dominated by the norms of the institutional setting and found to be better at explaining the variation in the strategies of the EU member state when engaged in bargaining within the EU institutions.

10.1.4 Observable Implication 3

The final observable implication was designed to evaluate the final causal mechanism in this theoretical argument – the truthful revelation of state interests. In particular, Chapter 3 and 4 argued that states would truthfully reveal their interests in a bargain structured by issues with offsetting distributional patterns, but not when the bargain was structured by issues with distributional patterns that were not offsetting. The case studies in Chapters 7 through 9 were used to highlight this important feature of the causal argument.

Following the predictions of the theoretical argument posited here, the truthful revelation of state interests largely corresponded to the presence of an issue linkage bargaining structure with offsetting distributional patterns. In the first phase of the Services Directive negotiations and the negotiations on the Racism and Xenophobia Framework Decision under the Luxembourg Presidency, the issues did not have offsetting distributional patterns. Overall, in these cases, the member states either did not truthfully reveal their interests or they engaged in the strategic misrepresentation of those interests – falsely claiming interests in order to gain leverage in the negotiations.

In addition, as predicted by the theoretical argument, this lack of truthful revelation of interests was explicitly cited as impeding the exchange of concessions. For example, in the case of the Services Directive, despite their willingness to give at least a little from their ideal position regarding the country of origin principle, member states claimed that they could not move at all from their stated position. In other words, member states on both sides of the negotiation presented their interests as “all or nothing” on this issue, and this largely brought the negotiations to a standstill.

Conversely, the Battery Directive, and the second phase of the Services Directive and the negotiations that took place over the Racism and Xenophobia Framework Decision under the German Presidency were structured by issues with offsetting distributional patterns. In these cases, following the predictions of the theoretical argument made here, the member states generally truthfully revealed their interests – i.e., their positions and, to a large extent, their willingness to give on different issues in these bargains.

In these cases, as predicted by the theory, this truthful revelation was also important in helping to bring about the exchange of concessions (i.e., cooperative bargaining) in these bargaining interactions, and to limit the ability of member states to adopt non-cooperative bargaining strategies. For example, in the case of the Services Directive, the truthful revelation of interests eliminated the possibility for member states that desired to bring back the country of origin principle from demanding or engaging in tactics to extract concessions on this issue. The transparency of their position and their willingness to accept the Freedom to Provide Services principle had been revealed to the other side. For these member states, the credibility of demands for concessions was therefore lost (Interviews 2006). In the case of the Battery Directive, it was truthful revelation of the bottom lines regarding the cadmium ban by member states on both sides that allowed them to offer concessions and find a compromise (i.e., a specific type of limited ban with possible future action in this area) on which member states on both sides could agree.

10.1.5 Overview of Empirical Evidence

Overall, the statistical analysis and case studies provide important empirical evidence in support of the theoretical argument made here. This evidence not only provided support for the

hypothesized relationship between the issue linkage structure of a bargain and the bargaining strategies states adopt, but it did so in a way such that the empirical test is characterized by a high degree of internal validity. Because many mitigating factors are held constant across these bargaining interactions and the comparisons made, a high degree of confidence can be held in the impact on those member state bargaining strategies attributed here to the issue linkage structure of the bargain.

Furthermore, though the empirical support is less clear-cut, confidence can be held not only in the effect of the institutional issue linkage structure on state bargaining strategies, but also in the causal mechanisms argued to underpin this relationship. The observable implications of this causal argument were highlighted and shown to be at work in each of the cases examined here.

10.2 LIMITATIONS OF THE ARGUMENT

The argument and the accompanying empirical test therefore provide an important theoretical and empirical first step toward understanding the conditions under which states will adopt cooperative bargaining strategies and the impact of the issue linkage bargaining structure on the bargaining strategies states adopt. However, while making important contributions to the study of international bargaining and cooperation, this project faces several limitations.

In order to construct a non-circular argument and empirical test, it was important to exogenize the issue structure of a bargain. The issues over which states bargain were therefore treated as a structural feature of a given bargaining interaction, and the structure's impact on the bargaining strategies of states examined. Treating the issue linkage characteristics as a structural

feature of the bargaining game was necessary to take this first step to make and test an argument about the impact of issue linkage structures on state bargaining strategies in a valid and non-circular way. However, it is also a limitation of the argument and points to important paths for future work in this research program. These are discussed in the sections that follow.

10.3 IMPLICATIONS OF ARGUMENT: DESIGNING BARGAINING STRUCTURES

Interestingly, though treating the issues over which states bargain as a “structural” feature, the argument presented here highlights the importance of agency and political leadership in the design of real-world negotiations. This is because the issue linkage structure of a bargain is not natural (i.e., set randomly by nature) but is *constructed* by political agents. The argument presented here therefore highlights the influence that mediators or institutionalized bargaining leaders can have when structuring international bargaining interactions.

This argument was a test of the impact of different institutional designs (conceptualized here in terms of the issue linkage structure of a bargain) on the bargaining strategies adopted by member states. By theoretically and empirically demonstrating this impact, this project provides important information to political actors that are in a position to set the issues over which states bargain.

These political leaders may desire to bring about cooperative interactions among the bargaining states – most particularly because of the impact that the adoption of cooperative strategies may have on the ability of states to reach a bargaining agreement.¹¹³ If these political

¹¹³ The study presented here does not directly speak to the reaching of bargaining agreements, but rather focuses solely on the cooperative nature of state bargaining strategies. However, two factors lead to this statement. First,

leaders desire to foster the adoption of these types of strategies, they can design the issue linkage bargaining structure by presenting issues over which the states bargain such that they have offsetting distributional patterns. As demonstrated by this study, these types of bargaining structures will then incentivize states to adopt cooperative, rather than competitive (non-cooperative), bargaining strategies.

The argument presented here therefore has important theoretical implications for the study of institutional design, and empirical implications for political agents such as mediators and bargaining leaders that are in a position to design bargaining structures.

10.3.1 Issue Linkage Design: The Role of the Commission and Presidency

In the case of the EU, this causal argument has important implications for the role of the Commission and the Presidency in the EU decision-making process. Not only does their agenda-setting power give them power to influence the legislation of the EU in a way that furthers their own interests, as has been demonstrated by prior research,¹¹⁴ the argument presented here also shows how they can influence the cooperative nature of the bargaining strategies that the member states adopt.

This was most evident in the bargaining on the Services Directive and the Framework Decision on Combating Racism and Xenophobia. Initial bargaining (over issues that did not

the strategies adopted in a strategic interaction have been argued and demonstrated to influence and determine the bargaining outcome. This is the essence of the “strategy profile” in the game-theoretic literature. Second, several studies that examine bargaining strategies have demonstrated that more cooperative types of strategies help bargaining actors to reach an agreement (Fisher and Ury 1981).

¹¹⁴ For examples of studies that have demonstrated the role of the Commission as an agenda-setter and its ability to use that power to forward its own interests, see (Peters 1994; Kerremans 1996; Pollack 1997; Pollack 2003; Pollack 2006). For examples of studies that have demonstrated this ability in relation to the Council Presidency, see (Tallberg 2003; Tallberg 2004; Tallberg 2006; Warntjen 2007).

possess offsetting distributional patterns) led to the strategic misrepresentation of interests and the adoption of largely non-cooperative bargaining strategies, preventing the states from being able to reach an agreement. When the bargains were restructured by the Commission or the Presidency such that the main issues had offsetting distributional patterns, the revelation of interests and the adoption of cooperative bargaining strategies (which helped the member states to reach an agreement) resulted.

This argument therefore highlights an important means through which the Commission and Presidency can impact the strategic interactions among the member states in the Council – their ability to design the issue linkage structure of member states’ bargaining interaction in their proposals for agreement. By choosing and framing the issues included in a proposal for agreement in a way that member states will consider different issues as important and central to their interests, the Commission and Presidency can provide member states with incentives to adopt cooperative bargaining strategies.

The interviews conducted highlight preliminary evidence of this power. “When you negotiate in an environment like this, you can’t have ten issues on which you focus. You have to concentrate your views. So you start with the issues you can’t live with or without. And then there are other opinions, which, if you had not had the other more important issues, then you would have taken those up. But if the Presidency maintains some problems, then you keep some states focused on those issues, and [thus] keep other problems down” (Interview with member state representative 2007). In other words, by including issues that are very important to certain states, the Commission or Presidency can keep those states focused on winning on those issues, making them willing to give on other, lesser issues on which they might otherwise demand to

receive concessions. This is an important implication of this argument, and a power of the Commission and Presidency that warrants additional theoretical and empirical analysis.

In addition to being able to influence the bargaining strategies adopted by the member states, the ability to structure a bargain gives the Commission and Presidency an additional power. In particular, by understanding when and on what issues concessions will be offered by the member states, the ability to design the institutional (game) structure of a bargain can also provide these institutions with an additional tool for influencing the outcome of the bargaining process.

Therefore, though a limitation of this argument, treating the issue structure as exogenous to the bargaining interaction allowed this study to make important theoretical and empirical arguments about how different institutional bargaining designs impact the bargaining strategies states adopt. Being able to test this in an internally valid way, this study highlights the implications and effects of different bargaining designs on international bargaining. Building on this argument to better understand the political process of the institutional design of bargaining structures is an important path for future research. The theoretical and empirical “first step” taken here provides an important base on which this future work can build.

10.4 PATHS FOR FUTURE RESEARCH: ISSUE LINKAGE AS A BARGAINING STRATEGY

Though it highlights the important role that political actors who have the ability to structure the bargaining interactions of states can play in impacting international bargaining, the argument in this dissertation faces a second limitation. In particular, in international bargaining settings,

there is not always a mediator or institutionalized bargaining leader that sets the issues over which states then bargain. In many cases of international bargaining, bringing in additional issues to alter the issue structure is a bargaining tactic that is often available to and used by states.

Using the case of the Framework Decision on Combating Racism and Xenophobia, Chapter 9 demonstrated how the theory presented here can be used to analyze and understand the bargaining strategies that *follow* issue linkage by a state. However, this theoretical argument in its current form cannot explain why and the conditions under which states will *use* issue linkage as a part of their bargaining strategies. Future research in this vein therefore needs to extend the argument to take into account the fact that issue linkage can be an important tactic in a state's overall bargaining strategy. The brief discussion that follows discusses how the theoretical framework presented here might be further developed to take into account this important theoretical extension.

10.4.1 Two Types of Issue Linkage

As discussed in the literature examining issue linkage, there are two main ways that issue linkage is used in a bargaining interaction. Importantly, both types of issue linkage are connected to the concept of cooperative bargaining as it is defined here.

First, states can link an issue in order to offer a concession on that new issue in exchange for a concession on an issue already included in the bargain (see Pruitt 1981). This type of issue linkage fits the definition of a cooperative bargaining strategy, as it involves the willing offering of concessions. The degree to which this issue linkage offer is cooperative could thus be measured using the coding rules laid out in Chapter 6.

Second, states can link an issue in order to hold the issues already included in the bargain “hostage” and extract concessions on the linked issue (see Sebenius 1992: 335). This corresponds to a concession-extracting bargaining tactic, and thus represents the least cooperative type of bargaining strategy available to states, as laid out in Chapter 6.

Using this connection between the type of issue linkage and the definition and coding of a cooperative bargaining strategy presented by this project, these two different types of issue linkage can potentially be incorporated into the theoretical framework laid out by this project. Building on this framework to incorporate issue linkage as a bargaining tactic is therefore an important next step to better understand international bargaining and states’ bargaining strategies.

10.5 FROM HERE

The theoretical argument and empirical analysis in the dissertation provide an important first step in the analysis of the cooperative nature of state bargaining strategies. It shows both theoretically and empirically that holding all else constant, when bargaining over issues with more offsetting distributional patterns, truthful revelation of interests and more cooperative types of bargaining strategies will be adopted by interest-maximizing bargaining actors. In particular, this is true for bargaining among states, even when a concern with relative, rather than absolute, gains drives their strategic choices. However, despite making important strides toward understanding how issue linkage bargaining structures impact international bargaining, this study has several limitations.

In particular, by treating the issues over which states bargain as a structural feature of a bargain, this study does not address the important question of *how* and *why* that bargaining structure comes to be constructed in that way. It therefore highlights this question about the political process of institutional design as an important one for future research to examine, and provides a theoretical and empirical foundation on which this future work can build.

In beginning to address this important question, this study provides important implications for political leaders of institutions who are in a position to set the issues over which states bargain. If these leaders desire to bring about cooperative bargaining interactions among states, it highlights a particular tool – the types of issues that the leader links together – through which they could achieve this goal. Building theoretically on and empirically evaluating this implication is an important path for future work in this research program.

A more clear limitation of the argument presented here relates to the adoption of issue linkage as a bargaining strategy available to states. A second important path for future research that this study highlights is the extension of this argument to include the possibility of issue linkage as a bargaining tactic available to states. This consideration was not incorporated into the theory presented here to avoid circularity of the theoretical argument and accompanying empirical test. Future efforts to incorporate this into the theoretical framework presented here will need to carefully control for and consider the problems of endogeneity and reverse causality in order to prevent the construction of a circular argument. This is a significant challenge which this future research will need to overcome.

Though it cannot directly address these issues yet, the theoretical argument in the dissertation provides an important first step in analyzing the impact of issue structure on state bargaining strategies. In doing so, it makes important strides in the study of bargaining

cooperation and the cooperative nature of state bargaining strategies. In addition, by conceptualizing and defining cooperative bargaining and offsetting distributional patterns, providing empirical measurement rules for these concepts, and theorizing and empirically demonstrating the relationship between them, this project provides a theoretical framework within which future work in this research program can expand on and extend the argument presented here.

APPENDIX A

DERIVING ISSUE LINKAGE CONDITIONS FOR COOPERATIVE BARGAINING

This Appendix is used to derive specific issue linkage conditions under which the willing offering of concessions can be sustained. Before undertaking this analysis, it is important to note that because of the zero-sum nature of bargaining on each issue, it is not possible that both players' concessions on a given issue are greater than zero. In other words, on a one-dimensional issue space, it is not possible for the outcome to be move from some starting point toward the ideal point of player 1 as well as toward the ideal point of player 2. In other words, it is not possible that both $c_{1X} > 0$ and $c_{2X} > 0$, nor is it possible that both $c_{1Y} > 0$ and $c_{2Y} > 0$.

To deal with this, regarding concessions on issue X: if $c_{1X} > 0$, then $c_{2X} = 0$, and if $c_{2X} > 0$, then $c_{1X} = 0$. The same is true for issue Y. Thus, four possible configurations of concession-offering outcomes are possible across the two issues. These cases can then be used to evaluate the issue linkage conditions under which the willing offering of concessions can be sustained.

In Case 1, the concessions on issue X are made such that $c_{1X} > 0$ and $c_{2X} = 0$ and the concessions on issue Y are made such that $c_{1Y} > 0$ and $c_{2Y} = 0$. In other words, in this case, player 1 offers concessions on both issues.

In Case 2, the concessions on issue X are made such that $c_{1X} = 0$ and $c_{2X} > 0$ and the concessions on issue Y are made such that $c_{1Y} = 0$ and $c_{2Y} > 0$. In other words, in this case, player 2 offers concessions on both issues.

In Case 3, the concessions on issue X are made such that $c_{1X} > 0$ and $c_{2X} = 0$ and the concessions on issue Y are made such that $c_{1Y} = 0$ and $c_{2Y} > 0$. In other words, in this case, player 1 offers concessions on issue X and player 2 offers concessions on issue Y.

In case 4, the concessions on issue X are made such that $c_{1X} = 0$ and $c_{2X} > 0$ and the concessions on issue Y are made such that $c_{1Y} > 0$ and $c_{2Y} = 0$. In other words, in this case, player 1 offers concessions on issue Y and player 2 offers concessions on issue X.

The sections that follow use each of these cases to evaluate under what (if any) issue linkage conditions are necessary for this type of concession-offering to be sustained. Remember, for any player to offer concessions, it must hold that the payoff from the concession offers (minus any bargaining costs) exceeds the status quo payoff, 0, for both players.¹¹⁵ In other words, it must hold that $(w_1 \cdot c_{2X} + c_{2Y}) - (w_1 \cdot c_{1X} + c_{1Y}) - v > 0$ and $(w_2 \cdot c_{1X} + c_{1Y}) - (w_2 \cdot c_{2X} + c_{2Y}) - v > 0$. These equations can be simplified to the following: $w_1(c_{2X} - c_{1X}) + (c_{2Y} - c_{1Y}) > v$ and $w_2(c_{1X} - c_{2X}) + (c_{1Y} - c_{2Y}) > v$. Let “Inequality (1)” refer to the requirement that $w_1(c_{2X} - c_{1X}) + (c_{2Y} - c_{1Y}) > v$ and let “Inequality (2)” refer to the requirement that $w_2(c_{1X} - c_{2X}) + (c_{1Y} - c_{2Y}) > v$.

¹¹⁵ This is because if the inequality does not hold for one player, they have no incentive to offer concessions. Thus, the other player will no longer receive the concession offer that yields to them an overall positive payoff and will therefore not, in equilibrium, offer concessions either.

A.1 CASE 1

In this case, $c_{1X} > 0$, $c_{2X} = 0$, $c_{1Y} > 0$, and $c_{2Y} = 0$. Thus, $c_{2X} - c_{1X} < 0$ and $c_{2Y} - c_{1Y} < 0$. Given that $w_1 > 0$ and $v \geq 0$, as they have been defined in Chapter 3, Inequality (1) can never hold. Thus, player 1 will never offer concessions in a way consistent with the type of concession-offering that characterizes Case 1.

A.2 CASE 2

In this case, $c_{1X} = 0$, $c_{2X} > 0$, $c_{1Y} = 0$, and $c_{2Y} > 0$. Thus, $c_{1X} - c_{2X} < 0$ and $c_{1Y} - c_{2Y} < 0$. Given that $w_2 > 0$ and $v \geq 0$, as they have been defined in Chapter 3, Inequality (2) can never hold. Thus, player 2 will never offer concessions in a way consistent with the type of concession-offering that characterizes Case 2.

A.3 CASE 3

In this case, $c_{1X} > 0$, $c_{2X} = 0$, $c_{1Y} = 0$, and $c_{2Y} > 0$. Thus, $c_{2X} - c_{1X} < 0$, $c_{2Y} - c_{1Y} > 0$, $c_{1X} - c_{2X} > 0$, and $c_{1Y} - c_{2Y} < 0$. Given $w_1 > 0$, $w_2 > 0$, and $v \geq 0$, there are some conditions under which both Inequality (1) and Inequality (2) will hold.

Consider first the payoffs to player 1 from a concession offer that fits the type defined by Case 3 – i.e., the case where player 1 offers concessions on issue X and player 2 offers concessions on issue Y. For player 1 to offer concessions in this way, Inequality (1) requires that $w_1(c_{2X} - c_{1X}) + (c_{2Y} - c_{1Y}) > v$. Given $c_{2X} - c_{1X} < 0$ and $c_{2Y} - c_{1Y} > 0$, this simplifies to the requirement that $w_1 < \frac{v - (c_{2Y} - c_{1Y})}{(c_{2X} - c_{1X})}$. Given $w_1 > 0$, $c_{2Y} - c_{1Y} > 0$, $c_{2X} - c_{1X} < 0$, and $v \geq 0$, it is possible for this inequality to hold at some values of w_1 and some concession offers.

This finding can be further evaluated to derive more specific conditions. For simplicity, assume that $v = 0$.¹¹⁶ Given that $c_{2X} = 0$ and $c_{1Y} = 0$, the inequality $w_1 < \frac{v - (c_{2Y} - c_{1Y})}{(c_{2X} - c_{1X})}$ thus simplifies to the requirement: $w_1 < \frac{c_{2Y}}{c_{1X}}$. Let “Inequality (3)” refer to this requirement that

$$w_1 < \frac{c_{2Y}}{c_{1X}}.$$

Now consider the payoffs to player 2 from a concession offer that fits the type defined by Case 3. For player 2 to offer concession in this way, Inequality (2) requires that $w_2(c_{1X} - c_{2X}) + (c_{1Y} - c_{2Y}) > v$. Given $c_{1X} - c_{2X} > 0$ and $c_{1Y} - c_{2Y} < 0$, this simplifies to the requirement that $w_2 > \frac{v - (c_{1Y} - c_{2Y})}{(c_{1X} - c_{2X})}$. Given $w_2 > 0$, $c_{1X} - c_{2X} > 0$, $c_{1Y} - c_{2Y} < 0$, and $v \geq 0$, it is possible for this inequality to hold at some values of w_2 and some concession offers.

¹¹⁶ The findings here generalize to any case in which $v > 0$. The only change is that they make the maximum value of w_1 and minimum value of w_2 that are necessary to sustain concession-offering of the type that defines Case 3 to be more extreme (i.e., w_1 must be smaller at larger values of v , and w_2 must be larger at larger values of v to sustain concession offering on issue X by player 1 and on issue Y by player 2.

This finding can be further evaluated to derive more specific conditions. For simplicity, assume that $v = 0$.¹¹⁷ Given that $c_{2X} = 0$ and $c_{1Y} = 0$, the inequality $w_2 > \frac{v - (c_{1Y} - c_{2Y})}{(c_{1X} - c_{2X})}$ thus simplifies to the requirement: $w_2 > \frac{c_{2Y}}{c_{1X}}$. Let “Inequality (4)” refer to this requirement that

$$w_2 > \frac{c_{2Y}}{c_{1X}}.$$

Inequality (3) demonstrates that at smaller values of w_1 , the minimal concession offered by player 2 on issue Y necessary to sustain a willingness to offer concessions on issue X by player 1 is smaller. More importantly, the smaller the value of w_1 , holding the concession offer of player 2 and the cost of bargaining constant, the larger the concession offered by player 1 can be and still yield to her a positive overall payoff. In other words, the smaller the value of w_1 , the greater the concession player 1 can willingly offer.

Inequality (4) demonstrates that at larger values of w_2 , the minimal concession offered by player 1 on issue X necessary to sustain a willingness to offer concessions on issue Y by player 2 is smaller. More importantly, the larger the value of w_2 , holding the concession offer of player 1 and the cost of bargaining constant, the larger the concession offered by player 2 can be and still yield to her a positive overall payoff. In other words, the larger the value of w_2 , the greater the concession player 2 can willingly offer.

¹¹⁷ The findings here generalize to any case where $v > 0$. The only change is that they make the maximum value of w_1 and minimum value of w_2 that are necessary to sustain concession-offering of the type that defines Case 3 to be more extreme (i.e., w_1 must be smaller at larger values of v , and w_2 must be larger at larger values of v to sustain concession offering on issue X by player 1 and on issue Y by player 2).

Taken together, this demonstrates that the smaller the value of w_1 and the larger the value of w_2 , the greater the possibility that the willing offering of concessions can be sustained by both players, and the greater is the magnitude of the concessions that can be offered. In other words, as $(w_2 - w_1)$ increases, the greater the possibility for concession-offering by both players, and the greater the magnitude of those concessions can be.

A.4 CASE 4

In this case, $c_{1X} = 0$, $c_{2X} > 0$, $c_{1Y} > 0$, and $c_{2Y} = 0$. Thus, $c_{2X} - c_{1X} > 0$, $c_{2Y} - c_{1Y} < 0$, $c_{1X} - c_{2X} < 0$, and $c_{1Y} - c_{2Y} > 0$. Given $w_1 > 0$, $w_2 > 0$, and $v \geq 0$, there are some conditions under which both Inequality (1) and Inequality (2) will hold.

Consider first the payoffs to player 1 from a concession offer that fits the type defined by Case 4 – i.e., the case where player 1 offers concessions on issue Y and player 2 offers concessions on issue X. For player 1 to offer concessions in this way, Inequality (1) requires that $w_1(c_{2X} - c_{1X}) + (c_{2Y} - c_{1Y}) > v$. Given $c_{2X} - c_{1X} > 0$ and $c_{2Y} - c_{1Y} < 0$, this simplifies to the requirement that $w_1 > \frac{v - (c_{2Y} - c_{1Y})}{(c_{2X} - c_{1X})}$. Given $w_1 > 0$, $c_{2Y} - c_{1Y} < 0$, $c_{2X} - c_{1X} > 0$, and $v \geq 0$, it is possible for this inequality to hold at some values of w_1 and some concession offers.

This finding can be further evaluated to derive more specific conditions. For simplicity, assume that $v = 0$.¹¹⁸ Given that $c_{1X} = 0$ and $c_{2Y} = 0$, the inequality $w_1 > \frac{v - (c_{2Y} - c_{1Y})}{(c_{2X} - c_{1X})}$ thus simplifies to the requirement: $w_1 > \frac{c_{1Y}}{c_{2X}}$. Let “Inequality (5)” refer to this requirement that

$$w_1 > \frac{c_{1Y}}{c_{2X}}.$$

Now consider the payoffs to player 2 from a concession offer that fits the type defined by Case 4. For player 2 to offer concessions in this way, Inequality (2) requires that $w_2(c_{1X} - c_{2X}) + (c_{1Y} - c_{2Y}) > v$. Given $c_{1X} - c_{2X} < 0$ and $c_{1Y} - c_{2Y} > 0$, this simplifies to the requirement that $w_2 < \frac{v - (c_{1Y} - c_{2Y})}{(c_{1X} - c_{2X})}$. Given $w_2 > 0$, $c_{1X} - c_{2X} < 0$, $c_{1Y} - c_{2Y} > 0$, and $v \geq 0$, it is possible for this inequality to hold at some values of w_2 and some concession offers.

This finding can be further evaluated to derive more specific conditions. For simplicity, assume that $v = 0$.¹¹⁹ Given that $c_{1X} = 0$ and $c_{2Y} = 0$, the inequality $w_2 < \frac{v - (c_{1Y} - c_{2Y})}{(c_{1X} - c_{2X})}$ thus simplifies to the requirement: $w_2 < \frac{c_{1Y}}{c_{2X}}$. Let “Inequality (6)” refer to this requirement that

$$w_2 < \frac{c_{1Y}}{c_{2X}}.$$

¹¹⁸ As described above, because the focus here is on the impact of the issue linkage structure, the strategic choice of the values of c_{2X} and c_{1Y} is not directly examined here. However, because this is an important strategic choice related to the idea of cooperative bargaining, it is an important consideration for future research.

¹¹⁹ The findings here generalize to any case in which $v > 0$. The only change is that they make the maximum value of w_1 and minimum value of w_2 that are necessary to sustain concession-offering of the type that defines Case 3 to be more extreme (i.e., w_1 must be smaller at larger values of v , and w_2 must be larger at larger values of v to sustain concession offering on issue X by player 1 and on issue Y by player 2).

Inequality (5) demonstrates that at larger values of w_1 , the minimal concession offered by player 2 on issue Y necessary to sustain a willingness to offer concessions on issue X by player 1 is smaller. More importantly, the larger the value of w_1 , holding the concession offer of player 2 and the cost of bargaining constant, the larger the concession offered by player 1 can be and still yield to her a positive overall payoff. In other words, the larger the value of w_1 , the greater the concession player 1 can willingly offer.

Inequality (6) demonstrates that at smaller values of w_2 , the minimal concession offered by player 1 on issue X necessary to sustain a willingness to offer concessions on issue Y by player 2 is smaller. More importantly, the smaller the value of w_2 , holding the concession offer of player 1 and the cost of bargaining constant, the larger the concession player 2 offers can be and still yield to her a positive overall payoff. In other words, the smaller the value of w_2 , the greater the concession player 2 can willingly offer.

Taken together, this demonstrates that the larger the value of w_1 and the smaller the value of w_2 , the greater the possibility that the willing offering of concessions can be sustained by both players, and the greater is the magnitude of the concessions that can be offered. In other words, as $(w_1 - w_2)$ increases, the greater the possibility for concession-offering by both players, and the greater the magnitude of the concessions can be.

A.5 MAIN FINDING

Taken together, the analysis above demonstrates that if the issues are differently valued, as $|w_1 - w_2|$ increases, the greater the possibility for concession-offering by both players, and the greater the magnitude of the concessions that are offered by each player can be and still yield a payoff to both players that is greater than their status quo payoff.

APPENDIX B

STATISTICAL MODELS USING ALL ODP MEASURES AND BOTH DEPENDENT VARIABLE MEASURES

The first four tables report the results from the “standard model” for all combinations of the measures of offsetting distributional patterns and cooperative bargaining. Table B.1 and Table B.2 present the statistical results for the models all nine continuous ODP measures, using the 12-category cooperative bargaining measure (DV1) and the 6-category cooperative bargaining measure (DV2), respectively. Table B.3 and Table B.4 present the statistical results for the models all nine dichotomous ODP measures, using the 12-category cooperative bargaining measure (DV1) and the 6-category cooperative bargaining measure (DV2), respectively.

The next four tables rerun all these models using voting weight, which an EU-specific measure of the power of a state, they use the natural log of the GDP of each member state as the measure of power. Table B.5 through B.8 therefore correspond directly to the Models reported in Tables B.1 through B.4, except for this different measure of state power. These models are labeled accordingly in order to demonstrate the correspondence for ease of comparison. For example, Model 1C in Table B.5 directly corresponds to Model 1A in Table B.1, except for the different measure of state power.

It should be noted that all nine continuous ODP measures result in the same dichotomization. In other words, they all categorize the same bargaining interactions as having offsetting distributional patterns (so the independent variable value equals 1) or as not having offsetting distributional patterns (so the independent variable value equals 0). Each therefore leads to the same statistical results, as reflected in the table here and in Table B.3, Table B.4, Table B.7 and Table B.8.

Table B.1. Statistical Results Using Continuous ODP Measures and 12-Category Dependent Variable

DV= Cooperative Bargaining, DV1 Measure	Model A1 Continuous D1/G1	Model A2 Continuous D1/G2	Model A3 Continuous D1/G3	Model A4 Continuous D2/G1	Model A5 Continuous D2/G2	Model 6A Continuous D2/G3	Model 7A Continuous D3/G1	Model 8A Continuous D3/G2	Model 9A Continuous D3/G3
Offsetting Distributional Pattern	17.770** (5.090)	13.605** (4.442)	16.100** (4.850)	21.267** (5.729)	15.814** (4.925)	18.812** (5.387)	20.726** (5.663)	17.315** (5.170)	19.991** (5.557)
Others' strategies	-1.170* (.581)	-.706 (.513)	-.977 (.554)	-1.436* (.618)	-.860 (.536)	-1.171* (.582)	-1.371* (.609)	-1.009 (.559)	-1.296* (.599)
Lagged DV	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)	.159 (.114)
Voting Weight	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)	-.054* (.022)
QMV	3.115** (1.056)	1.893 (.836)	2.471** (.934)	3.635** (1.130)	2.131* (.870)	2.809** (.983)	3.548** (1.122)	2.305* (.889)	2.968** (.999)
Publicity	-1.745* (.768)	-.717 (.627)	-1.074 (.665)	-2.484** (.888)	-1.126 (.680)	-1.604** (.742)	-2.686** (.938)	-1.416* (.720)	-1.919* (.790)
Scandinavian	-.248 (.695)	-.264 (.692)	-.255 (.694)	-.240 (.696)	-.259 (.693)	-.248 (.695)	-.242 (.696)	-.253 (.694)	-.244 (.695)
Euro	.232 (.650)	.230 (.647)	.231 (.649)	.234 (.652)	.231 (.648)	.233 (.650)	.234 (.651)	.232 (.649)	.233 (.651)
New MS	.029 (.759)	.026 (.757)	.028 (.758)	.032 (.761)	.027 (.758)	.029 (.759)	.031 (.760)	.028 (.758)	.030 (.760)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.105	.099	.102	.108	.101	.105	.107	.103	.106
PRE (Mode %)	19.48%	23.22%	20.22%	22.85%	21.72%	19.48%	23.60%	20.22%	20.22%
Log likelihood	-225.664	-227.094	-226.260	-224.846	-226.620	-225.660	-225.044	-226.159	-225.276
Chi² (prob>chi²)	53.09 (.000)	50.23 (.000)	51.90 (.000)	54.73 (.000)	51.18 (.000)	53.10 (.000)	54.33 (.000)	52.10 (.000)	53.87 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.2. Statistical Results Using Continuous ODP Measures and 6-Category Dependent Variable

DV= Cooperative Bargaining, DV2 Measure	Model 10A Continuous D1/G1	Model 11A Continuous D1/G2	Model 12A Continuous D1/G3	Model 13A Continuous D2/G1	Model 14A Continuous D2/G2	Model 15A Continuous D2/G3	Model 16A Continuous D3/G1	Model 17A Continuous D3/G2	Model 18A Continuous D3/G3
Offsetting Distributional Pattern	35.291** (8.656)	23.692** (7.055)	30.339** (8.015)	45.222** (10.142)	28.828** (8.000)	37.372** (9.163)	43.360** (9.926)	32.928** (8.585)	41.028** (9.629)
Others' strategies	-6.748** (2.088)	-3.950* (1.716)	-5.523** (1.931)	-8.572** (2.311)	-4.824** (1.838)	-6.755** (2.089)	-8.114** (2.256)	-5.725** (1.958)	-7.591** (2.193)
Lagged DV	-.085 (.239)	-.102 (.236)	-.092 (.238)	-.075 (.240)	-.096 (.237)	-.085 (.239)	-.077 (.240)	-.091 (.238)	-.080 (.239)
Voting Weight	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)	-.056* (.024)
QMV	5.389** (1.359)	2.877** (.942)	4.025** (1.123)	6.681** (1.526)	3.346** (1.005)	4.781** (1.224)	6.437** (1.502)	3.725** (1.045)	5.177** (1.264)
Publicity	-3.941** (1.024)	-1.764* (.698)	-2.518** (.792)	-5.730** (1.307)	-2.556** (.816)	-3.662** (.969)	-6.074** (1.398)	-3.184** (.910)	-4.402** (1.084)
Scandinavian	-.532 (.806)	-.550 (.799)	-.539 (.803)	-.525 (.811)	-.543 (.802)	-.532 (.806)	-.526 (.810)	-.538 (.804)	-.529 (.808)
Euro	.201 (.703)	.190 (.698)	.197 (.701)	.207 (.707)	.194 (.700)	.201 (.703)	.206 (.706)	.197 (.702)	.204 (.705)
New MS	-.100 (.824)	-.094 (.818)	-.097 (.238)	-.107 (.828)	-.095 (.820)	-.100 (.824)	-.105 (.827)	-.097 (.822)	-.103 (.826)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.215	.195	.206	.228	.202	.215	.225	.208	.221
PRE (Mode %)	34.95%	33.01%	33.98%	36.89%	34.95%	34.95%	36.89%	33.98%	34.95%
Log likelihood	-118.617	-121.600	-119.921	-116.685	-120.668	-118.609	-117.169	-119.706	-117.722
Chi² (prob>chi²)	65.19 (.000)	59.23 (.000)	62.59 (.000)	69.06 (.000)	61.09 (.000)	65.21 (.000)	68.09 (.000)	63.02 (.000)	66.98 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.3. Statistical Results Using Dichotomous ODP Measures and 12-Category Dependent Variable

DV= Cooperative Bargaining, DV1 Measure	Model 1B Dichotomous D1/G1	Model 2B Dichotomous D1/G2	Model 3B Dichotomous D1/G3	Model 4B Dichotomous D2/G1	Model 5B Dichotomous D2/G2	Model 6B Dichotomous D2/G3	Model 7B Dichotomous D3/G1	Model 8B Dichotomous D3/G2	Model 9B Dichotomous D3/G3
Offsetting Distributional Pattern	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)	452.229** (68.713)
Others' strategies	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)	-160.016** (24.327)
Lagged DV	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)	.196 (.213)
Voting Weight	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)	-.001 (.037)
QMV	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)	31.086** (4.887)
Publicity	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)	-92.041** (14.066)
Scandinavian	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)	.537 (1.222)
Euro	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)	.273 (1.057)
New MS	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)	.885 (1.250)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.800	.800	.800	.800	.800	.800	.800	.800	.800
PRE (Mode %)	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%
Log likelihood	-50.408	-50.408	-50.408	-50.408	-50.408	-50.408	-50.408	-50.408	-50.408
Chi² (prob>chi²)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)	403.60 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.4. Statistical Results Using Dichotomous ODP Measures and 6-Category Dependent Variable

DV= Cooperative Bargaining, DV2 Measure	Model 1B Dichotomous D1/G1	Model 2B Dichotomous D1/G2	Model 3B Dichotomous D1/G3	Model 4B Dichotomous D2/G1	Model 5B Dichotomous D2/G2	Model 6B Dichotomous D2/G3	Model 7B Dichotomous D3/G1	Model 8B Dichotomous D3/G2	Model 9B Dichotomous D3/G3
Offsetting Distributional Pattern	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)	70.762** (10.418)
Others' strategies	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)	-52.954** (7.955)
Lagged DV	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)	-.254 (.276)
Voting Weight	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)	-.069* (.028)
QMV	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)	-3.319** (.977)
Publicity	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)	-14.132** (2.127)
Scandinavian	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)	-.685 (.873)
Euro	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)	-.382 (.791)
New MS	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)	-1.204 (.956)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.492	.492	.492	.492	.492	.492	.492	.492	.492
PRE (Mode %)	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%
Log likelihood	-76.783	-76.783	-76.783	-76.783	-76.783	-76.783	-76.783	-76.783	-76.783
Chi² (prob>chi²)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)	148.86 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.5. Statistical Results Using Continuous ODP Measures and 12-Category Dependent Variable, with GDP

DV= Cooperative Bargaining, DV1 Measure	Model 1C Continuous D1/G1	Model 2C Continuous D1/G2	Model 3C Continuous D1/G3	Model 4C Continuous D2/G1	Model 5C Continuous D2/G2	Model 6C Continuous D2/G3	Model 7C Continuous D3/G1	Model 8C Continuous D3/G2	Model 9C Continuous D3/G3
Offsetting Distributional Pattern	17.106** (5.113)	13.016** (4.462)	15.463** (4.872)	20.528** (5.755)	15.165** (4.947)	18.109** (5.412)	19.993** (5.688)	16.637** (5.193)	19.271** (5.582)
Others' strategies	-1.093 (.586)	-.637 (.517)	-.903 (.558)	-1.355* (.622)	-.788 (.540)	-1.094 (.586)	-1.291* (.613)	-.935 (.563)	-1.217* (.603)
Lagged DV	.138 (.113)	.138 (.113)	.138 (.113)	.137 (.113)	.138 (.113)	.138 (.113)	.138 (.113)	.138 (.113)	.138 (.113)
GDP (natural log)	-.437** (.154)	-.443** (.154)	-.439** (.154)	-.434** (.154)	-.441** (.154)	-.437** (.154)	-.435** (.154)	-.439** (.154)	-.435** (.154)
QMV	2.975** (1.063)	1.785* (.842)	2.349* (.940)	3.485** (1.138)	2.018* (.876)	2.680** (.989)	3.399** (1.129)	2.190* (.895)	2.837** (1.006)
Publicity	-1.671* (.770)	-.675 (.627)	-1.022 (.666)	-2.388** (.891)	-1.070 (.681)	-1.535* (.743)	-2.582** (.942)	-1.351 (.721)	-1.841* (.792)
Scandinavian	-.075 (.659)	-.092 (.657)	-.081 (.658)	-.066 (.661)	-.086 (.658)	-.075 (.659)	-.068 (.660)	-.080 (.659)	-.070 (.660)
Euro	.221 (.649)	.217 (.646)	.219 (.648)	.223 (.651)	.218 (.876)	.221 (.649)	.222 (.651)	.219 (.648)	.222 (.650)
New MS	-.635 (.862)	-.650 (.859)	-.641 (.860)	-.626 (.863)	-.645 (.860)	-.635 (.862)	-.628 (.863)	-.640 (.861)	-.630 (.862)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.109	.103	.107	.112	.105	.109	.111	.107	.110
PRE (Mode %)	20.60%	18.35%	19.48%	21.35%	19.10%	20.60%	21.35%	19.48%	21.35%
Log likelihood	-224.635	-225.997	-225.204	-223.853	-225.547	-224.632	-224.043	-225.107	-224.265
Chi² (prob>chi²)	55.15 (.000)	52.42 (.000)	54.01 (.000)	56.71 (.000)	53.32 (.000)	55.15 (.000)	56.33 (.000)	54.20 (.000)	55.89 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.6. Statistical Results Using Continuous ODP Measures and 6-Category Dependent variable, with GDP

DV= Cooperative Bargaining, DV2 Measure	Model 10C Continuous D1/G1	Model 11C Continuous D1/G2	Model 12C Continuous D1/G3	Model 13C Continuous D2/G1	Model 14C Continuous D2/G2	Model 15C Continuous D2/G3	Model 16C Continuous D3/G1	Model 17C Continuous D3/G2	Model 18C Continuous D3/G3
Offsetting Distributional Pattern	34.633** (8.688)	23.114** (7.083)	29.710** (8.045)	44.486** (10.176)	28.188** (8.031)	36.675** (9.196)	42.632** (9.961)	32.258** (8.617)	40.312 (9.664)
Others' strategies	-6.528** (2.100)	-3.747* (1.727)	-5.310** (1.943)	-8.343** (2.323)	-4.615* (1.849)	-6.535** (2.101)	-7.887** (2.268)	-5.511** (1.969)	-7.367 (2.204)
Lagged DV	-.112 (.240)	-.128 (.238)	-.119 (.239)	-.102 (.241)	-.123 (.238)	-.112 (.240)	-.104 (.241)	-.118 (.239)	-.107 (.240)
GDP (natural log)	-.459** (.174)	-.465** (.173)	-.462** (.173)	-.455** (.175)	-.463** (.173)	-.459** (.174)	-.456** (.174)	-.461** (.173)	-.457 (.174)
QMV	5.221** (1.364)	2.741** (.946)	3.875** (1.128)	6.505** (1.532)	3.206** (1.009)	4.625** (1.228)	6.261** (1.507)	3.582** (1.049)	5.020 (1.269)
Publicity	-3.808** (1.027)	-1.663* (.699)	-2.406** (.794)	-5.575** (1.310)	-2.441** (.818)	-3.533** (.972)	-5.912** (1.403)	-3.059** (.912)	-4.264 (1.087)
Scandinavian	-.339 (.761)	-.360 (.755)	-.347 (.759)	-.330 (.765)	-.353 (.757)	-.339 (.761)	-.332 (.764)	-.346 (.759)	-.335 (.763)
Euro	.184 (.700)	.168 (.695)	.177 (.698)	.192 (.703)	.174 (.697)	.184 (.700)	.190 (.702)	.178 (.698)	.188 (.702)
New MS	-.797 (.939)	-.808 (.933)	-.801 (.937)	-.795 (.944)	-.804 (.935)	-.797 (.939)	-.795 (.943)	-.800 (.937)	-.796 (.941)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.221	.202	.213	.234	.208	.221	.231	.214	.227
PRE (Mode %)	34.95%	35.92%	34.95%	35.92%	35.92%	34.95%	35.92%	33.98%	35.92%
Log likelihood	-117.687	-120.593	-118.959	-115.796	-119.686	-117.679	-116.270	-118.749	-116.812
Chi² (prob>chi²)	67.05 (.000)	61.24 (.000)	64.51 (.000)	70.84 (.000)	63.06 (.000)	67.07 (.000)	69.89 (.000)	64.93 (.000)	68.81 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.7. Statistical Results Using Dichotomous ODP Measures and 12-Category Dependent variable, with GDP

DV= Cooperative Bargaining, DV1 Measure	Model 1D Dichotomous D1/G1	Model 2D Dichotomous D1/G2	Model 3D Dichotomous D1/G3	Model 4D Dichotomous D2/G1	Model 5D Dichotomous D2/G2	Model 6D Dichotomous D2/G3	Model 7D Dichotomous D3/G1	Model 8D Dichotomous D3/G2	Model 9D Dichotomous D3/G3
Offsetting Distributional Pattern	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)	454.721** (69.096)
Others' strategies	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)	-16.916** (24.465)
Lagged DV	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)	.197 (.213)
GDP (natural log)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)	.132 (.251)
QMV	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)	31.241** (4.908)
Publicity	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)	-92.570** (14.148)
Scandinavian	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)	.711 (1.157)
Euro	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)	.379 (1.046)
New MS	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)	1.350 (1.389)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.800	.800	.800	.800	.800	.800	.800	.800	.800
PRE (Mode %)	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%	92.51%
Log likelihood	-50.269	-50.269	-50.269	-50.269	-50.269	-50.269	-50.269	-50.269	-50.269
Chi² (prob>chi²)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)	403.88 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

Table B.8. Statistical Results Using Dichotomous ODP Measures and 6-Category Dependent variable, with GDP

DV= Cooperative Bargaining, DV2 Measure	Model 10D Dichotomous D1/G1	Model 11D Dichotomous D1/G2	Model 12D Dichotomous D1/G3	Model 13D Dichotomous D2/G1	Model 14D Dichotomous D2/G2	Model 15D Dichotomous D2/G3	Model 16D Dichotomous D3/G1	Model 17D Dichotomous D3/G2	Model 18D Dichotomous D3/G3
Offsetting Distributional Pattern	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)	71.574** (10.658)
Others' strategies	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)	-53.488** (8.132)
Lagged DV	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)	-.295 (.280)
GDP (natural log)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)	-.605** (.211)
QMV	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)	-3.471** (.980)
Publicity	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)	-14.197** (2.158)
Scandinavian	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)	-.519 (.834)
Euro	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)	-.449 (.797)
New MS	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)	-2.259 (1.151)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.501	.501	.501	.501	.501	.501	.501	.501	.501
PRE (Mode %)	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%	63.11%
Log likelihood	-75.461	-75.461	-75.461	-75.461	-75.461	-75.461	-75.461	-75.461	-75.461
Chi² (prob>chi²)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)	151.51 (.000)
* represents statistical significance at the .05 level ** represents statistical significance at the .01 level									

APPENDIX C

STATISTICAL MODELS WITH INTERACTION TERM

Table C.1 reports the results from the standard model, along with the inclusion of the interaction term for the continuous measures of offsetting distributional patterns and the 12-category measure of cooperative bargaining (DV1). The Models are labeled to illustrate the correspondence between these models and the models reported in Appendix B. For example, Model 1E in Table C.1 directly corresponds to Model 1A in Table B.1. The only difference is the models reported in the Appendix here include the interaction term.

Because the effect of offsetting distributional patterns on cooperative bargaining cannot be directly interpreted from this table alone, Figures C.1 through C.9 illustrate the effect of offsetting distributional patterns taking into account the fact that this effect is captured both by the parameter associated with the component term as well as the parameter associated with the interaction term. For all Models/Figures, the effect of offsetting distributional patterns is positive and statistically significant at the 95% confidence level for all empirically-occurring values of the *others' strategies* variable. The 95% confidence interval is reported in each Figure to illustrate this claim.

Table C.2 then analyzes these same models, using the natural log of member states' GDP (rather than their voting weight) as the measure of their power.

Table C.1. Statistical Output for Interaction Models

DV= Cooperative Bargaining, DV1 Measure	Model 1E ODP D1/G1	Model 2E ODP D1/G2	Model 3E ODP D1/G3	Model 4E ODP D2/G1	Model 5E ODP D2/G2	Model 6E ODP D2/G3	Model 7E ODP D3/G1	Model 8E ODP D3/G2	Model 9E ODP D3/G3
Offsetting Distributional Pattern	-309.898** (37.948)	-351.355** (43.406)	-305.683** (37.837)	-370.531** (44.816)	-412.066** (50.545)	-366.605** (44.880)	-430.527** (50.929)	-435.717** (53.253)	-397.597** (48.360)
Others' strategies	-70.681** (8.237)	-64.157** (7.609)	-73.688** (8.672)	-70.120** (8.094)	-63.637** (7.500)	-73.409** (8.571)	-63.005** (7.154)	-62.336** (7.312)	-70.929** (8.237)
ODP*Others' strategies Interaction	196.706** (23.017)	189.774** (22.595)	195.911** (23.158)	208.403** (24.171)	200.813** (23.784)	207.730** (24.380)	204.410** (23.332)	201.481** (23.773)	207.21** (24.205)
Lagged DV	.306* (.148)	.267 (.137)	.271 (.145)	.343* (.147)	.303* (.137)	.308* (.144)	.370* (.143)	.322* (.136)	.328* (.142)
Voting Weight	-.059* (.028)	-.056* (.027)	-.056* (.028)	-.060* (.027)	-.058* (.027)	-.057* (.027)	-.061* (.027)	-.059* (.026)	-.058* (.027)
QMV	132.227** (15.370)	82.794** (9.776)	108.702** (12.754)	133.920** (15.420)	83.393** (9.783)	110.039** (12.809)	121.871** (13.790)	81.489** (9.513)	106.069** (12.278)
Publicity	-93.637** (10.910)	-46.582** (5.539)	-64.415** (7.590)	-109.885** (12.673)	-60.347** (7.105)	-80.317** (9.373)	-109.593** (12.418)	-65.868** (7.710)	-85.357** (9.900)
Scandinavian	.019 (.916)	.153 (.849)	.113 (.898)	-.004 (.902)	.126 (.837)	.093 (.886)	-.038 (.859)	.122 (.830)	.091 (.871)
Euro	-.215 (.811)	-.116 (.762)	-.140 (.794)	-.270 (.805)	-.167 (.757)	-.193 (.788)	-.298 (.779)	-.190 (.754)	-.217 (.780)
New MS	-.801 (.946)	-.565 (.892)	-.624 (.928)	-.929 (.941)	-.690 (.888)	-.747 (.922)	-1.013 (.915)	-.749 (.885)	-.807 (.914)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.616	.562	.604	.605	.550	.594	.571	.542	.582
PRE (Mode %)	83.52%	80.15%	83.52%	82.77%	79.78%	82.40%	80.90%	79.03%	81.65%
Log likelihood	-96.829	-110.246	-99.655	-99.435	-113.320	-102.293	-107.993	-115.286	-105.362
Chi² (prob>chi²)	310.76 (.000)	283.93 (.000)	305.11 (.000)	305.55 (.000)	277.78 (.000)	299.83 (.000)	288.43 (.000)	273.85 (.000)	293.69 (.000)
* represents statistical significance at the .05 level, ** represents statistical significance at the .01 level									

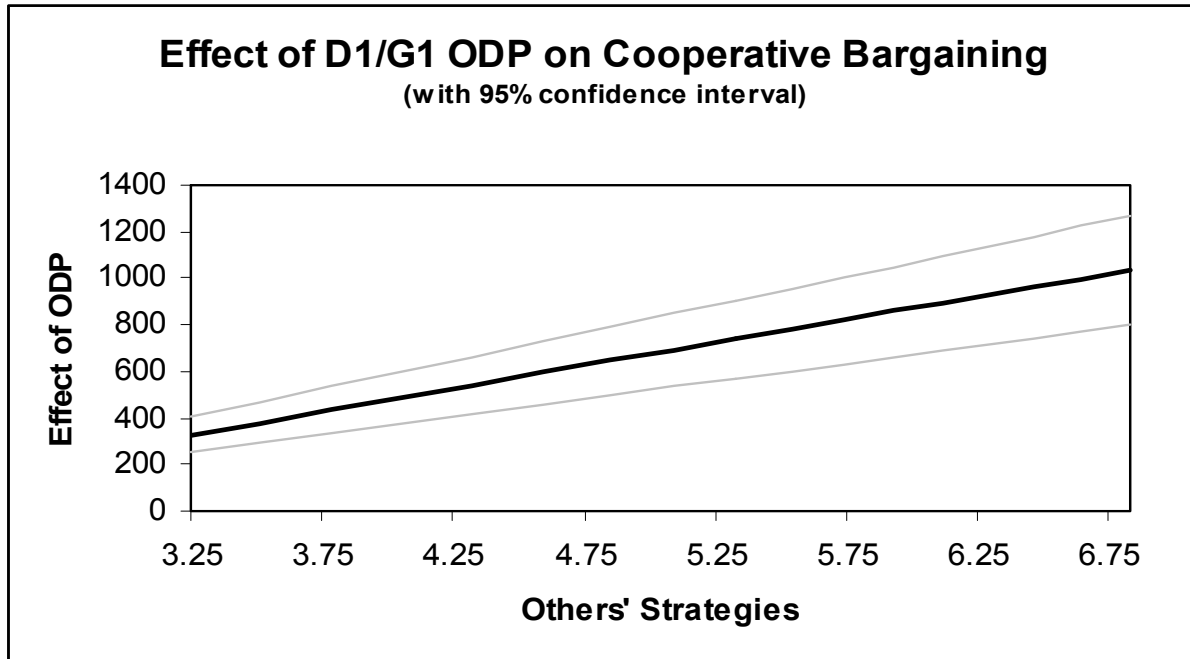


Figure C.1. Effect of D1/G1 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 1E statistical results)

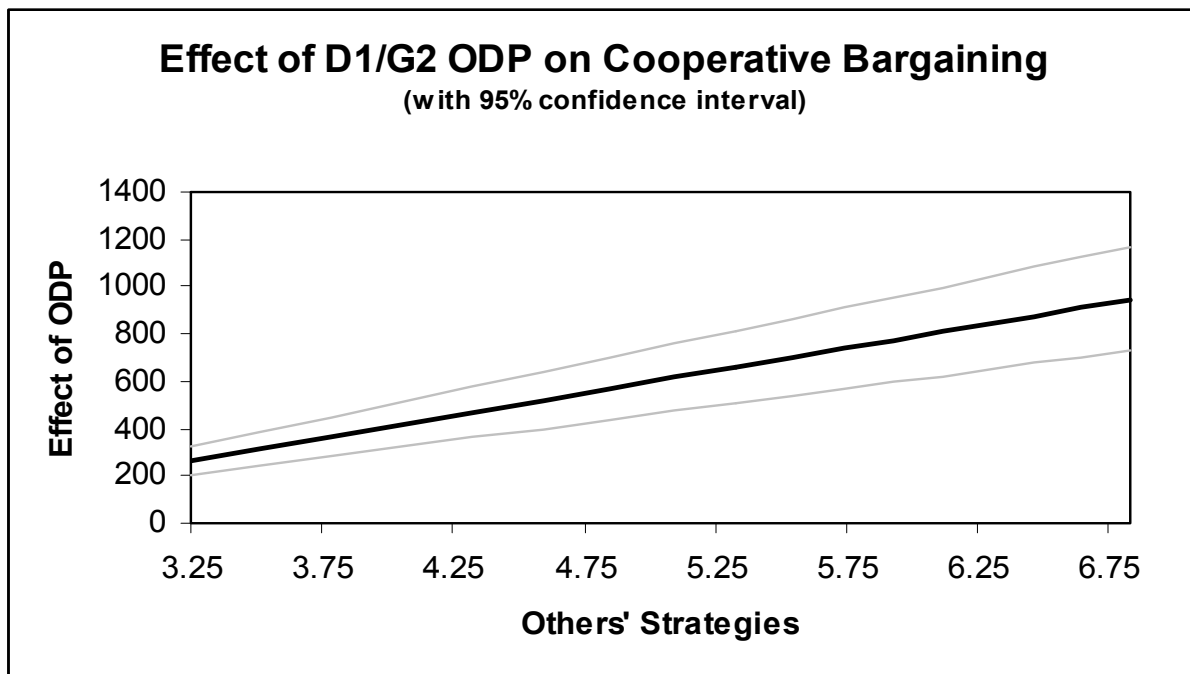


Figure C.2. Effect of D1/G2 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 2E statistical results)

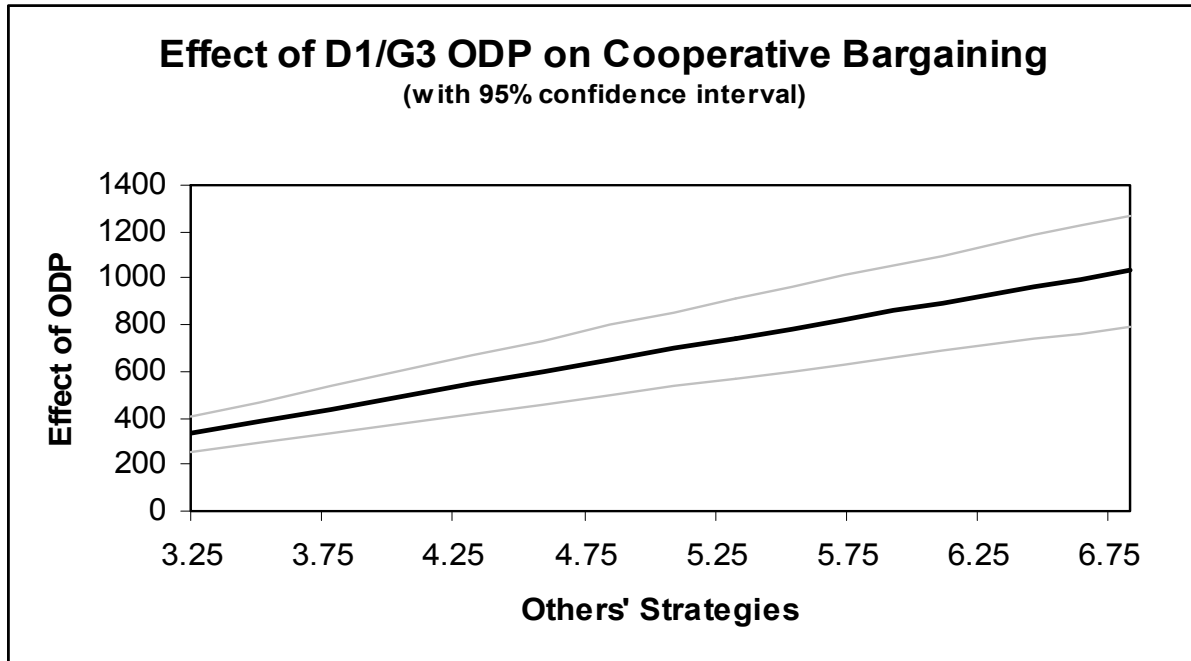


Figure C.3. Effect of D1/G3 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 3E statistical results)

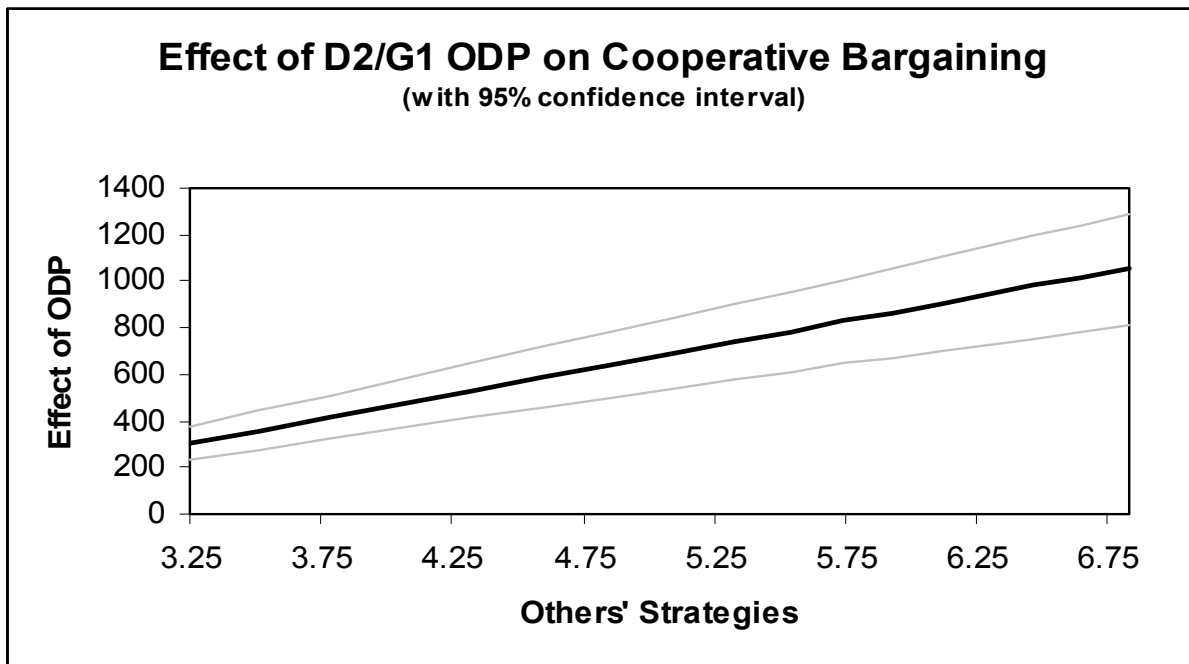


Figure C.4. Effect of D2/G1 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 4E statistical results)

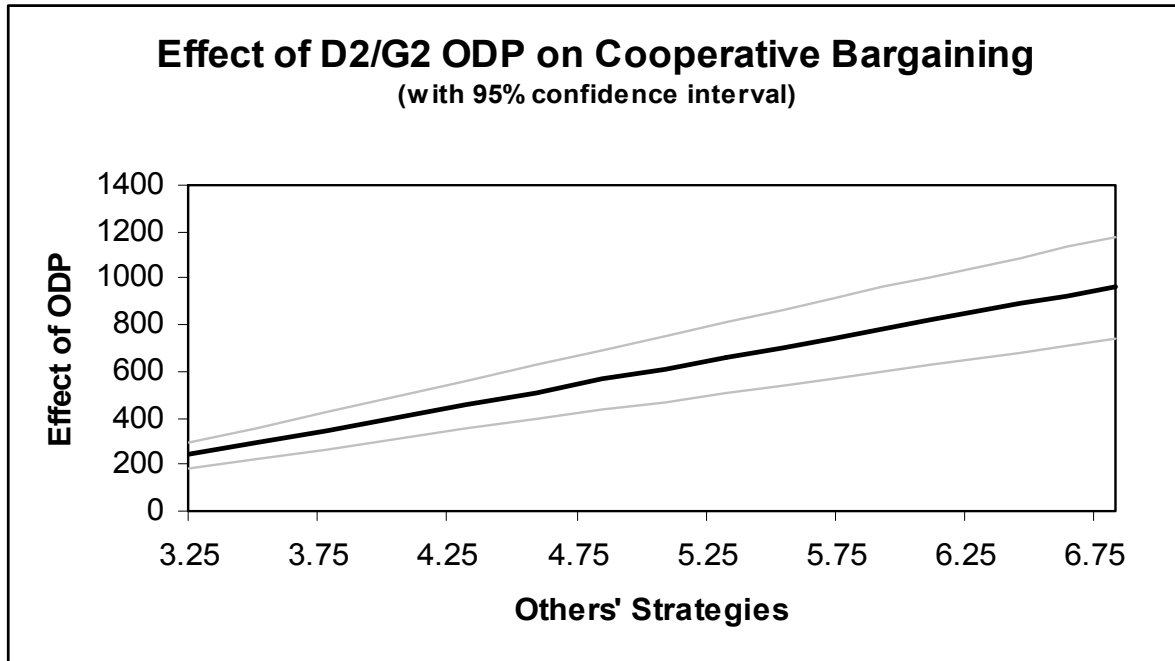


Figure C.5. Effect of D2/G2 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 5E statistical results)

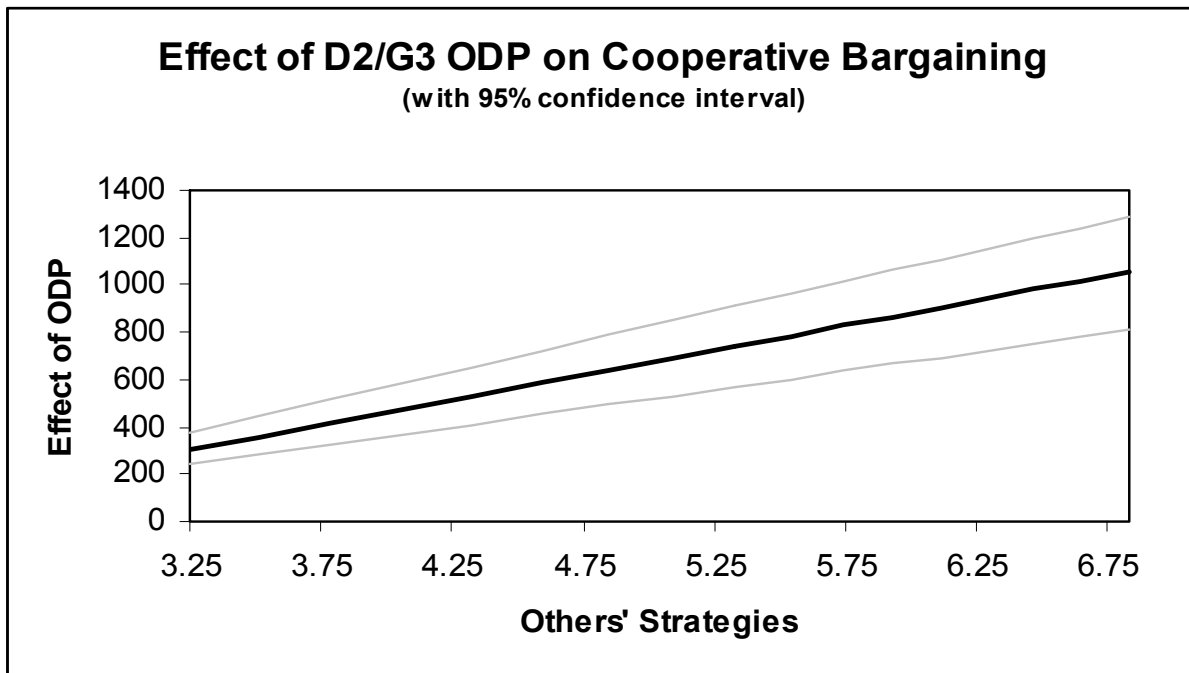


Figure C.6. Effect of D2/G3 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 6E statistical results)

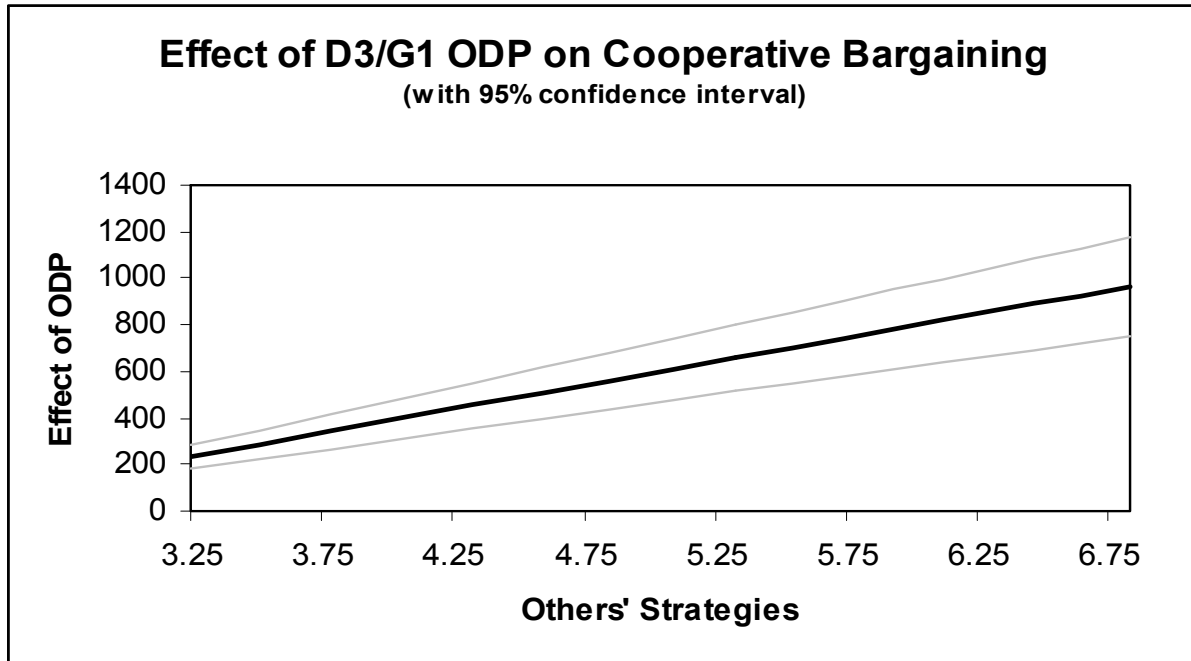


Figure C.7. Effect of D3/G1 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 7E statistical results)

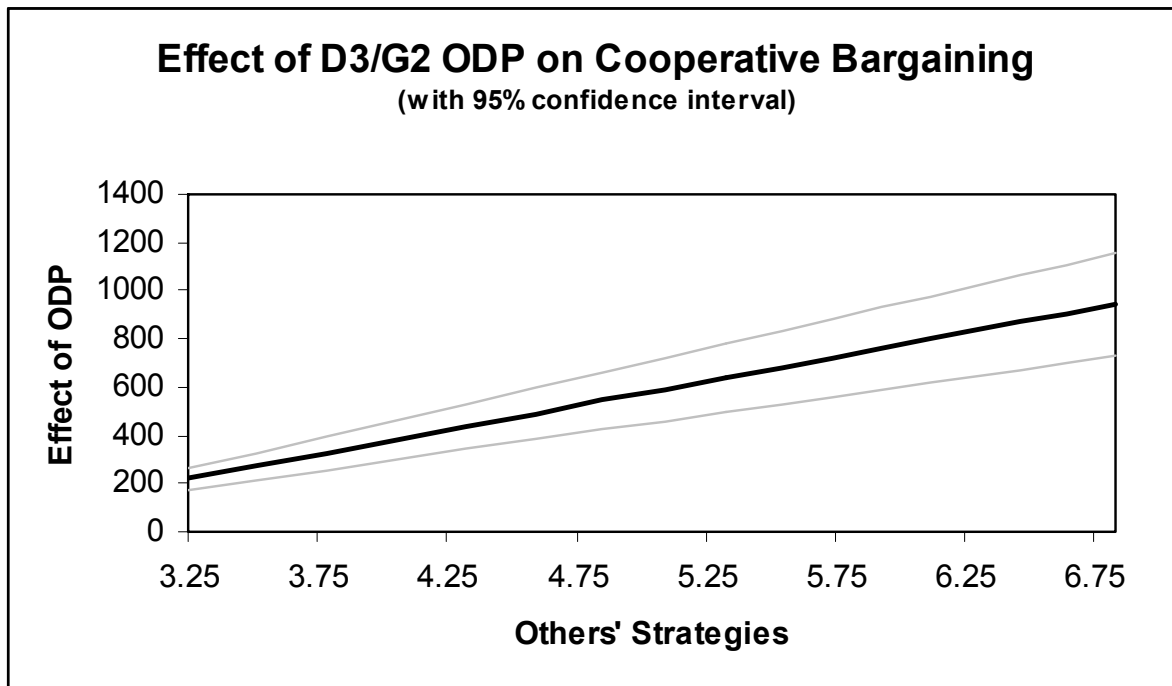


Figure C.8. Effect of D3/G2 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 8E statistical results)

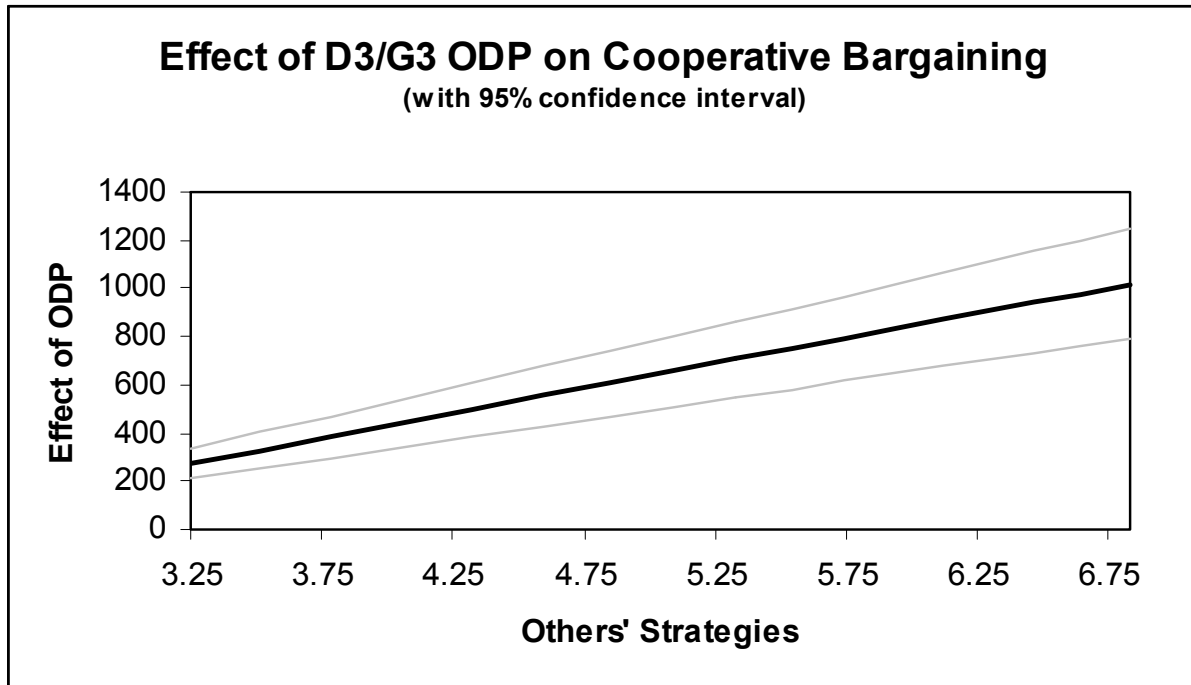


Figure C.9. Effect of D3/G3 Measure of ODP on Cooperative Bargaining at Empirically-Occurring Values of Others' Strategies (based on Model 9E statistical results)

Table C.2. Statistical Results with Interaction Term and GDP Measure of Power

DV= Cooperative Bargaining, DV1 Measure	Model 1F ODP D1/G1	Model 2F ODP D1/G2	Model 3F ODP D1/G3	Model 4F ODP D2/G1	Model 5F ODP D2/G2	Model 6F ODP D2/G3	Model 7F ODP D3/G1	Model 8F ODP D3/G2	Model 9F ODP D3/G3
Offsetting Distributional Pattern	-307.889** (38.089)	-351.808** (43.855)	-305.140** (38.044)	-367.279** (45.016)	-411.687** (51.228)	-365.367** (45.246)	-425.877** (51.214)	-434.699** (54.100)	-395.917** (48.859)
Others' strategies	-70.032** (8.215)	-64.105** (7.675)	-73.365** (8.686)	-69.323** (8.071)	-63.441** (7.582)	-72.972** (8.600)	-62.190** (7.148)	-62.051** (7.404)	-70.450** (8.279)
ODP*Others' strategies Interaction	194.991** (22.989)	189.677** (22.800)	195.127** (23.213)	206.15** (24.149)	200.277** (24.062)	206.591** (24.491)	201.875** (23.361)	200.663** (24.097)	205.922** (24.365)
Lagged DV	.273 (.146)	.235 (.135)	.240 (.143)	.309* (.146)	.270* (.135)	.276 (.142)	.333* (.141)	.288* (.135)	.295* (.141)
GDP (natural log)	-.200 (.196)	-.205 (.187)	-.188 (.195)	-.212 (.192)	-.222 (.185)	-.201 (.192)	-.236 (.185)	-.231 (.183)	-.210 (.189)
QMV	131.006** (15.332)	82.713** (9.864)	108.217** (12.777)	132.393** (15.379)	83.122** (9.892)	109.374** (12.854)	120.290** (13.781)	81.106** (9.635)	105.345** (12.343)
Publicity	-92.775** (10.882)	-46.546** (5.588)	-64.135** (7.604)	-108.630** (12.637)	-60.158** (7.183)	-79.834** (9.405)	-108.170** (12.407)	-65.563** (7.806)	-84.774** (9.950)
Scandinavian	.529 (.868)	.619 (.804)	.601 (.852)	.505 (.853)	.597 (.792)	.583 (.839)	.463 (.811)	.594 (.784)	.578 (.824)
Euro	.040 (.797)	.105 (.751)	.103 (.782)	-.017 (.791)	.052 (.745)	.048 (.776)	-.059 (.765)	.026 (.742)	.018 (.768)
New MS	-.551 (1.067)	-.389 (1.009)	-.382 (1.051)	-.701 (1.056)	-.540 (1.000)	-.526 (1.040)	-.847 (1.023)	-.615 (.995)	-.608 (1.028)
N	129	129	129	129	129	129	129	129	129
pseudo R²	.609	.556	.598	.598	.544	.587	.564	.536	.575
PRE (Mode %)	85.02%	83.15%	84.27%	84.64%	81.27%	83.90%	80.90%	80.15%	83.90%
Log likelihood	-98.539	-111.839	-101.244	-101.220	-115.009	-103.963	-109.868	-117.017	-107.074
Chi² (prob>chi²)	307.34 (.000)	280.74 (.000)	301.93 (.000)	301.98 (.000)	274.40 (.000)	296.49 (.000)	284.68 (.000)	270.39 (.000)	290.27 (.000)
* represents statistical significance at the .05 level, ** represents statistical significance at the .01 level									

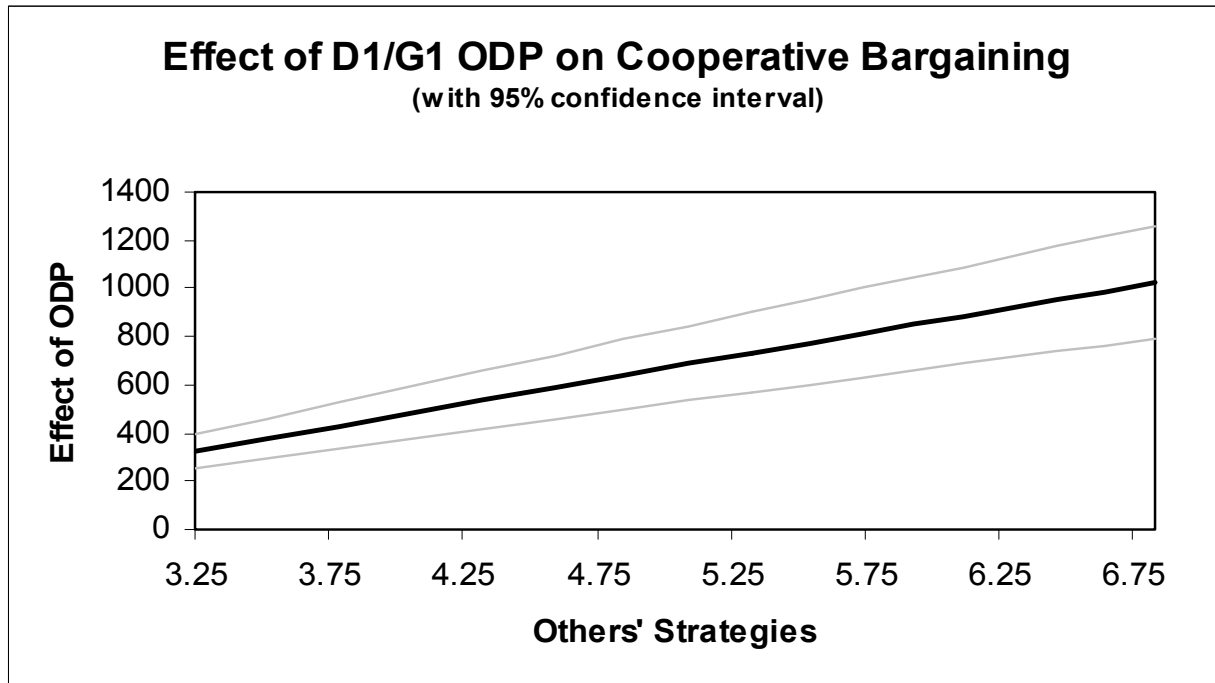


Figure C.10. Effect of D1/G1 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 1F statistical results)

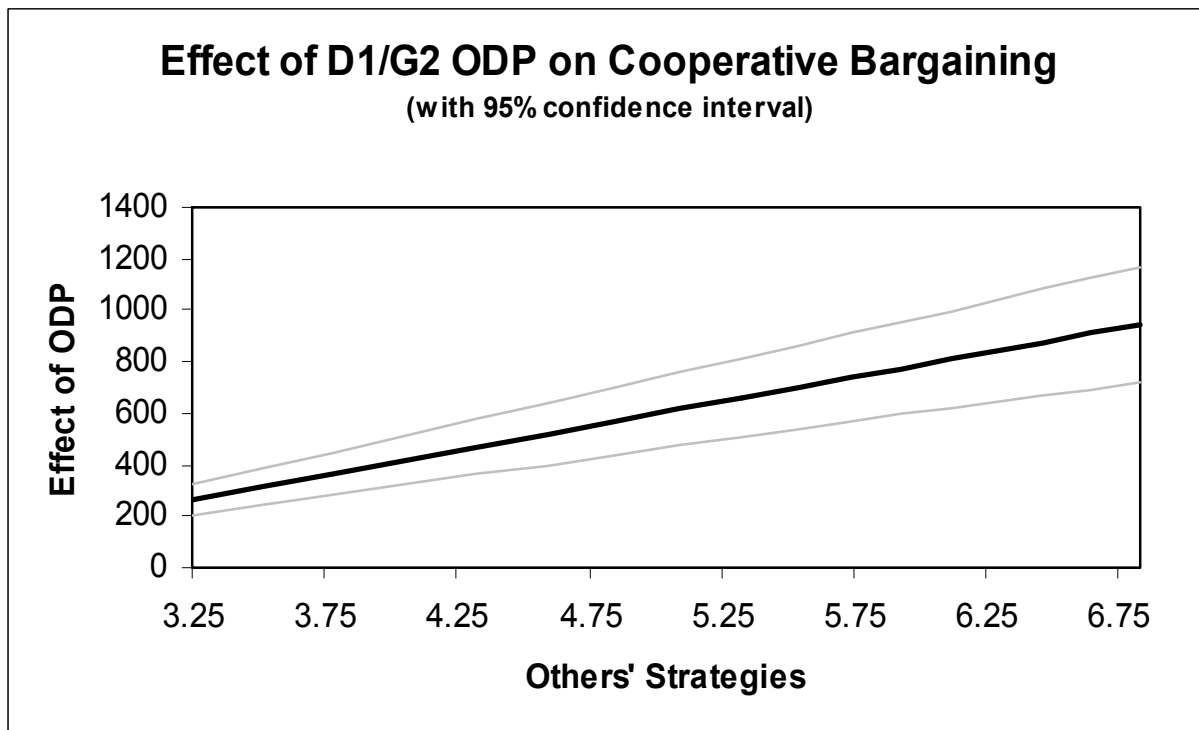


Figure C.11. Effect of D1/G2 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 2F statistical results)

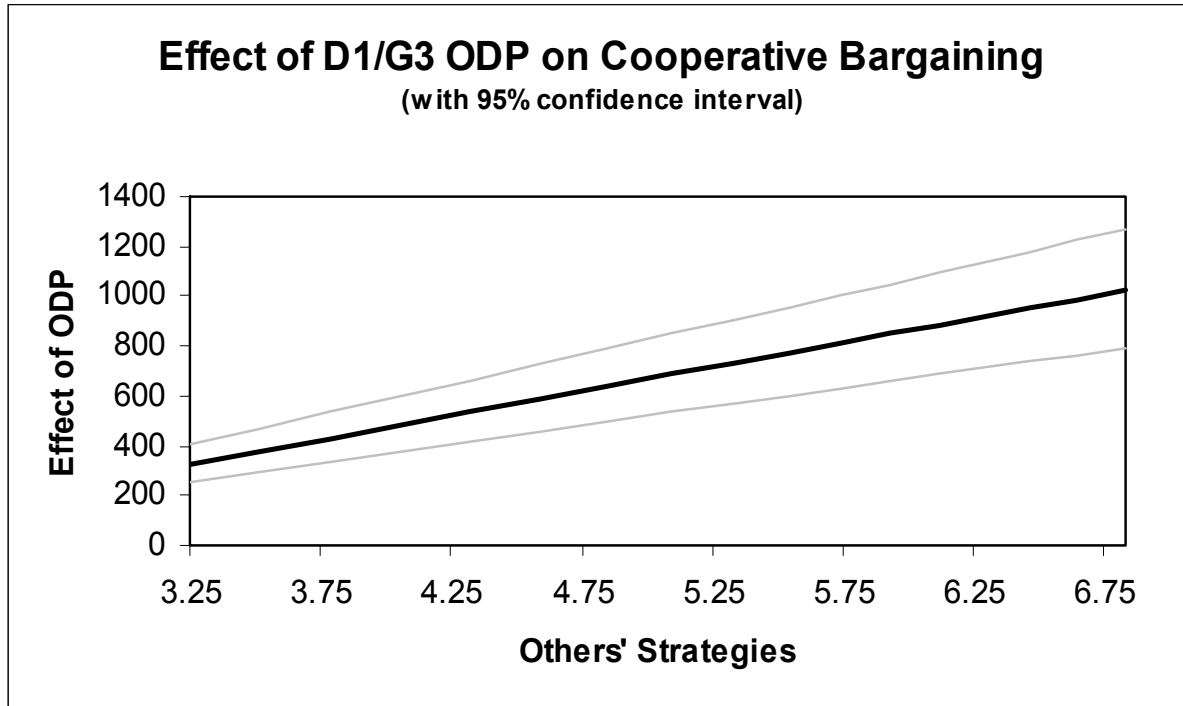


Figure C.12. Effect of D1/G3 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 3F statistical results)

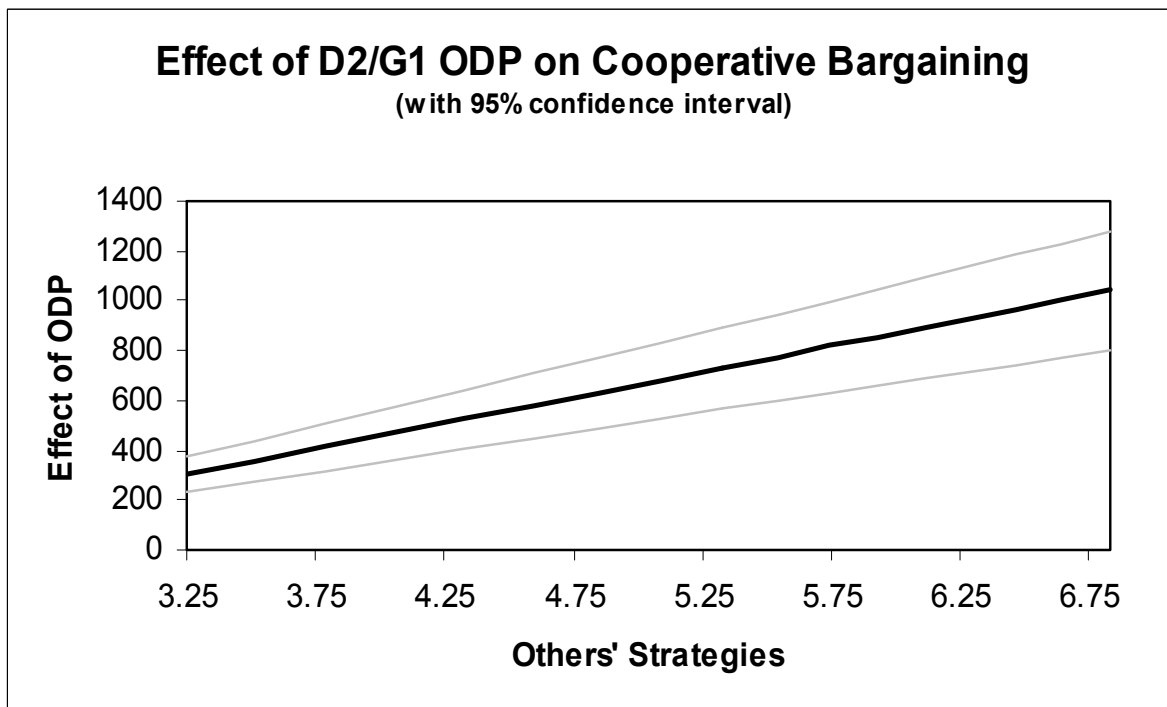


Figure C.13. Effect of D2/G1 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 4F statistical results)

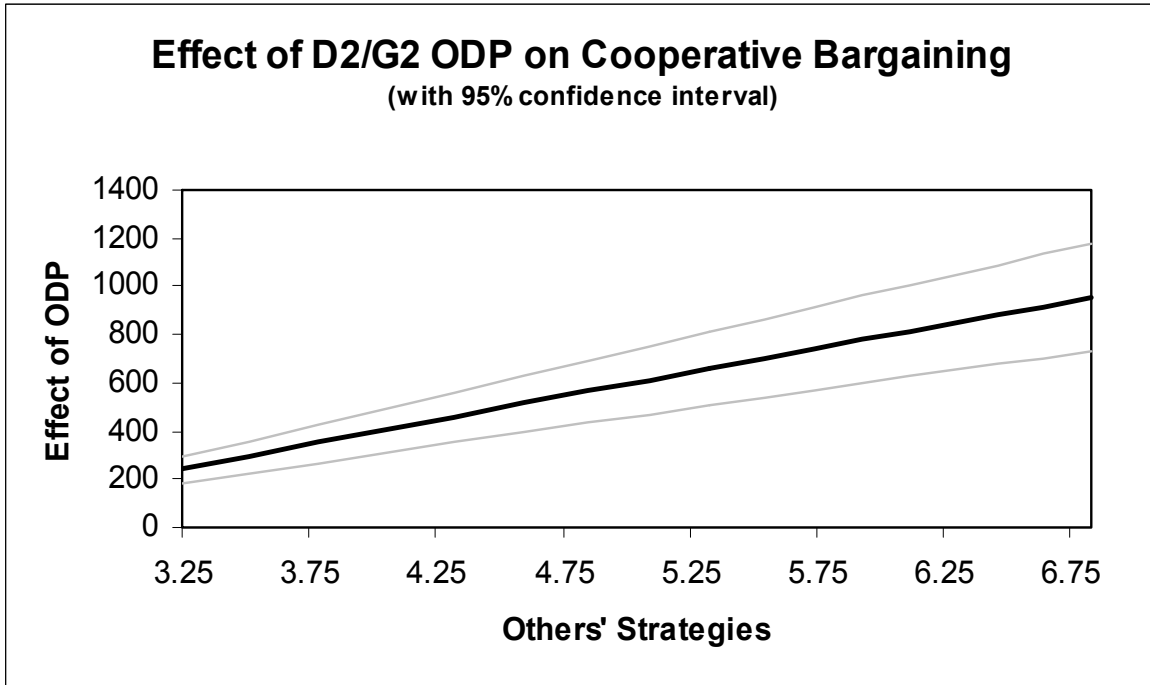


Figure C.14. Effect of D2/G2 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 5F statistical results)

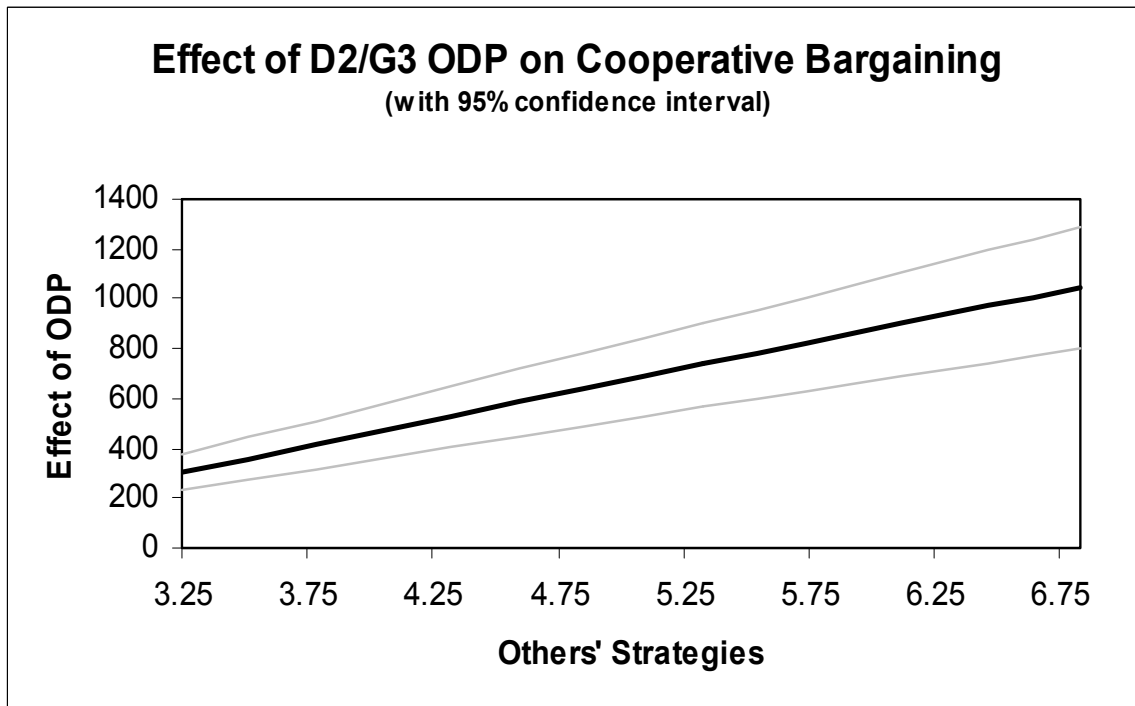


Figure C15. Effect of D2/G3 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 6F statistical results)

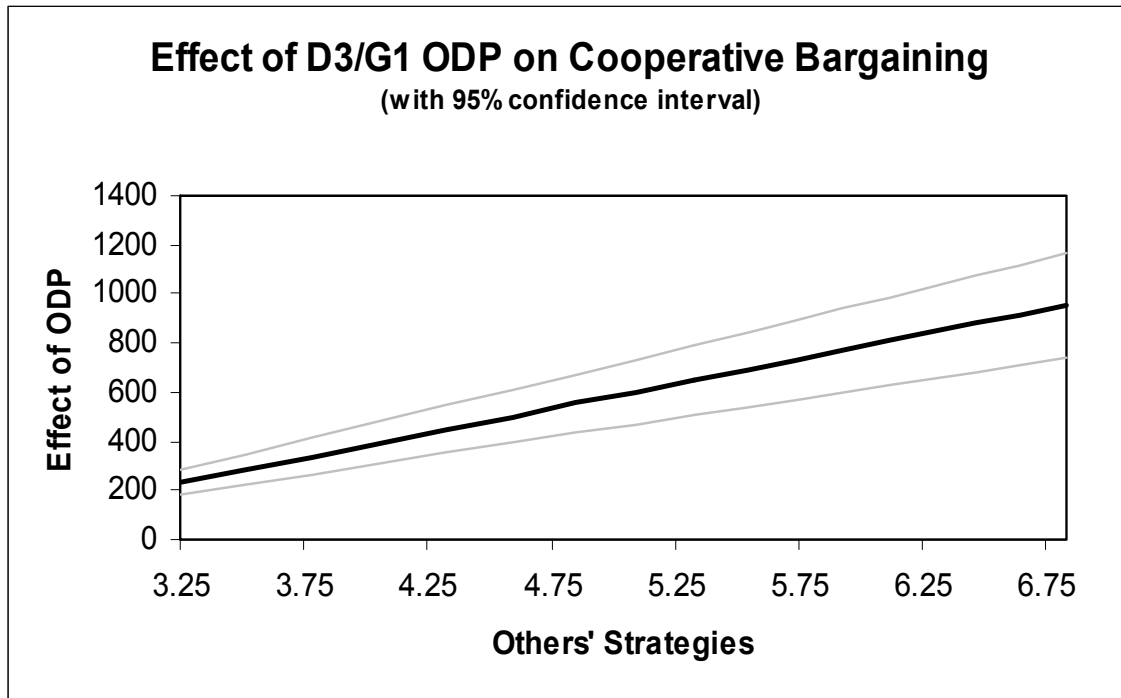


Figure C.16. Effect of D3/G1 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 7F statistical results)

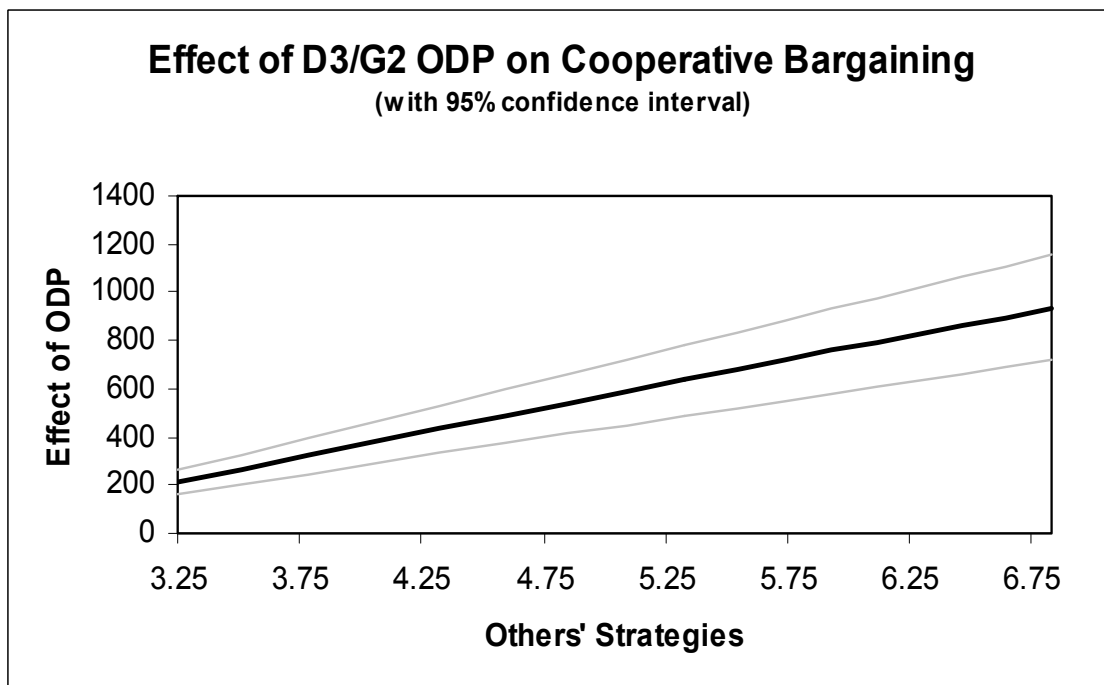


Figure C.17. Effect of D3/G2 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 8F statistical results)

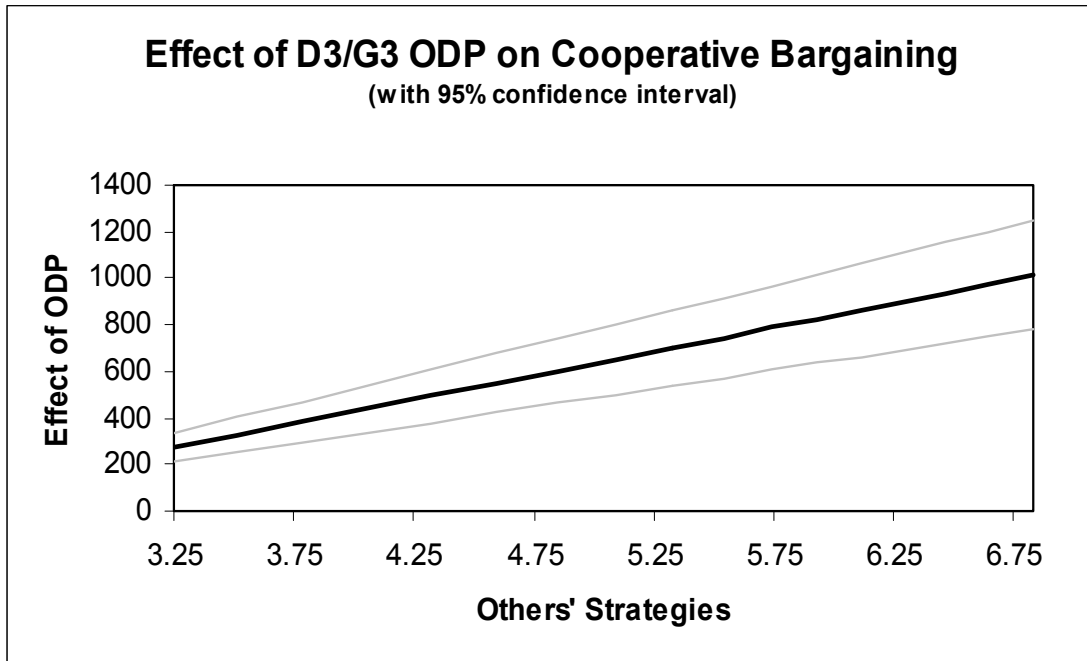


Figure C.18. Effect of D3/G3 Measure of ODP on Cooperative Bargaining with GDP Measure of Power at Empirically-Occurring Values of Others' Strategies (based on Model 9F statistical results)

APPENDIX D

DESCRIPTION OF RANDOMLY ASSIGNED MEMBER STATE LABELS

Table D.1 below describes central characteristics of the member states associated with each randomly assigned label. In addition, in order to provide as much information as possible, Table D.2 also demonstrates how these characteristics correspond to the actual EU member states, providing information about how these different characteristics were defined and used. From this, the basic information about each randomly labeled member state can be ascertained.

Table D.1. Randomly Assigned Member State Labels and Corresponding State Characteristics

Member State Label	State Size	New or Old?	Scandinavian State?	Mediterranean State?	BeNeLux State?	State Using the Euro?
1	Small	Old	Yes	No	No	Yes
2	Small	Old	No	No	Yes	Yes
3	Medium	Old	No	No	Yes	Yes
4	Medium	Old	No	Yes	No	Yes
5	Medium	New	No	No	No	No
6	Large	Old	No	Yes	No	Yes
7	Small	New	No	No	No	No
8	Large	Old	No	No	No	No
9	Large	New	No	No	No	No
10	Small	New	No	No	No	No
11	Large	Old	No	No	No	Yes
12	Small	Old	Yes	No	No	No
13	Medium	Old	No	No	No	Yes
14	Medium	New	No	No	No	No
15	Medium	Old	Yes	No	No	No
16	Small	New	No	No	No	No
17	Large	Old	No	Yes	No	Yes
18	Small	New	No	Yes	No	No
19	Medium	Old	No	Yes	No	Yes
20	Large	Old	No	Yes	No	Yes
21	Small	New	No	No	No	No
22	Medium	Old	No	No	Yes	Yes
23	Small	New	No	No	No	No
24	Small	Old	No	No	No	Yes
25	Small	New	No	No	No	No
26	Medium	New	No	No	No	No
27	Medium	New	No	No	No	No

Table D.2. Member States and Corresponding Characteristics

Member State	State Size	New or Old?	Scandinavian State?	Mediterranean State?	BeNeLux State?	State Using the Euro?
Austria	Medium	Old	No	No	No	Yes
Belgium	Medium	Old	No	No	Yes	Yes
Bulgaria	Medium	New	No	No	No	No
Cyprus	Small	New	No	Yes	No	No
Czech Republic	Medium	New	No	No	No	No
Denmark	Small	Old	Yes	No	No	No
Estonia	Small	New	No	No	No	No
Finland	Small	Old	Yes	No	No	Yes
France	Large	Old	No	Yes	No	Yes
Germany	Large	Old	No	No	No	Yes
Greece	Medium	Old	No	Yes	No	Yes
Hungary	Medium	New	No	No	No	No
Ireland	Small	Old	No	No	No	Yes
Italy	Large	Old	No	Yes	No	Yes
Latvia	Small	New	No	No	No	No
Lithuania	Small	New	No	No	No	No
Luxembourg	Small	Old	No	No	Yes	Yes
Malta	Small	New	No	No	No	No
Poland	Large	New	No	No	No	No
Portugal	Medium	Old	No	Yes	No	Yes
Romania	Medium	New	No	No	No	No
Slovakia	Small	New	No	No	No	No
Slovenia	Small	New	No	No	No	No
Spain	Large	Old	No	Yes	No	Yes
Sweden	Medium	Old	Yes	No	No	No
The Netherlands	Medium	Old	No	No	Yes	Yes
United Kingdom	Large	Old	No	No	No	No

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